CITY OF BRIGHTON, COLORADO
REGULAR SESSION
JUNE 17, 2014
7:00 P.M.

***THERE IS A 5-MINUTE LIMIT TO ADDRESS COUNCIL.**

MAYOR
MAYOR PRO-TEM

COUNCIL MEMBERS

- **RICHARD N MCLEAN**
- **KIRBY WALLIN**
- **LYNN BACA**
- **REX BELL**
- **JW EDWARDS**
- **MARK HUMBERT**
- **JOAN KNISS**
- **KEN KREUTZER**
- **CYNTHIA A MARTINEZ**

1. CALL TO ORDER

A. Pledge of Allegiance to the American Flag.
B. Roll Call.

2. CONSENT AGENDA

3. APPROVAL OF REGULAR AGENDA (Council may take a short break between 8:30–9:00 p.m.)

4. CEREMONIES

A. Introduction of New Employees by Human Resources Director Karen Borkowski Surine.

5. PUBLIC INVITED TO BE HEARD ON MATTERS NOT ON THE AGENDA (Speakers limited to five minutes)

6. PUBLIC HEARINGS

A. A Resolution of the City Council of the City of Brighton, Colorado, Approving a Final Plat and Development Agreement, with Specific Conditions as more Particularly Set Forth Herein, for an Approximately 19.12 Acre Property Commonly Known as the "FMC Surface Technologies Facility," Generally Located in Section 30, Township 1 North, Range 66 West of the Sixty (6^{th}) Principal Meridian, City of Brighton, County of Weld, State of Colorado; Approving the Final Plat and Development Agreement as a Site Specific Development Plan Vested Property Right, to be Vested for a Period of Three (3) Years, to Expire on June 17, 2017; and Authorizing the Mayor to Execute said Development Agreement on Behalf of the City.

7. ORDINANCES FOR INITIAL CONSIDERATION

A. An Ordinance of the City Council of the City of Brighton, Colorado Approving an Oil and Gas Lease (No Surface Occupancy) with Synergy Resources Corporation for +/- 140 Net Acres in Certain Portions of Sections 14, 24, and 25, Township 1 South, Range 67 West of the 6^{th} P.M., Adams County Colorado; Finding that the Terms of said Lease are Reasonable and that it is in the Best Interest of the City to Enter into said Lease; Authorizing the Mayor to Execute said Lease on Behalf of the City and the City Clerk to Attest Thereto; Authorizing the City Manager to Undertake such Tasks and Execute such Documents as may be Required to Implement said Lease; and Setting Forth Other Details Related Thereto.

8. RESOLUTIONS

A. A Resolution of the City Council of the City of Brighton, Colorado, Appointing Amanda Lesinski as a Member of the Liquor Licensing Authority with a Term to January, 2019.

B. A Resolution of the City Council of the City of Brighton, Colorado, Approving the Open Space Grant Agreement with Adams County in the Amount not to exceed Four Hundred Seventeen Thousand Three Hundred Dollars ($417,300.00), to Provide Funding for the Project Referred to as the "Bromley-Hishinuma Historic Farm Landscape Project"; and Authorizing the City Manager to Execute said Grant Agreement on Behalf of the City.

C. A Resolution of the City Council of the City of Brighton, Colorado, Approving the Open Space Mini-Grant Agreement with Adams County in the Amount not to exceed Five Thousand Dollars ($5,000.00), to Provide Funding for the Project Referred to as the "Veterans Memorial at Veterans Park"; and Authorizing the City Manager to Execute said Grant Agreement on Behalf of the City.

D. A Resolution of the City Council of the City of Brighton, Colorado, Approving the Open Space Grant Agreement with Adams County in the Amount of Two Hundred Four Thousand Dollars ($204,000.00), to Provide Funding for the Acquisition of Certain Real Property Referred to as the "Pleasant Plains Schoolhouse Property Acquisition"; and Authorizing the City Manager to Execute said Grant Agreement on Behalf of the City.

9. UTILITIES BUSINESS ITEMS

Ordinances

Resolutions

A. A Resolution of the City Council of the City of Brighton, Colorado, Acting by and through its Water Enterprise, Authorizing the City Manager to Execute a Water Supply and Delivery Agreement with Central Colorado Water Conservancy District.

10. GENERAL BUSINESS

11. REPORTS

A. By the Mayor
B. By Department Heads
C. By the City Attorney
D. By the City Manager

12. REPORTS BY COUNCIL ON BOARDS & COMMISSIONS

13. EXECUTIVE SESSION

For the Purpose of Determining Positions Relative to Matters that may be Subject to Negotiations, Developing Strategy for Negotiations, and/or Instructing Negotiators, Under C.R.S. Section 24-6-402(4)(e) Regarding Water and Retail Development Prospects and For a Conference with the City Attorney for the Purpose of Receiving Legal Advice on Specific Legal Questions Under C.R.S. Section 24-6-402(4)(b) Regarding Oil and Gas and Denver International Airport.

14. ADJOURNMENT

City Council Agenda Item 6A

COMMUNITY DEVELOPMENT DEPARTMENT

To:	Mayor and City Council, Through City Manager, Manuel Esquibel
Prepared By:	Jason Bradford, AICP, Planning Division Manager
Requested Action:	Hold a Public Hearing, consider a resolution for the Final Plat and Development Agreement, and consider a resolution to grant a site specific development plan to vest the Final Plat and Development Agreement for a period of three (3) years, for the FMC Surface Technologies Facility Property.
Requested Council Date:	June 17, 2014

Statutory or Municipal Code Process Requirements (in order):

1. Hold a Public Hearing;
2. Consider a resolution to approve the Final Plat and Development Agreement;
3. Consider a resolution to vest the Final Plat and Development Agreement for a period of three (3) years.

Statutory or Municipal Code Notification Requirements:

Final Plat and Vesting	Neighborhood Notice	Newspaper Publication	Property Posting
Required	**Min. 5 day notice**	**Not Required**	**Not Required**
Actual	**Sent: May 28, 2014**	**Published: May 28, 2014**	**Posted: June 11, 2014**
	To: Adjacent property owners	**In: Brighton Standard Blade**	**Where: Large format banner sign posted on the Property; west of WCR 27 (N. Main St.)**
	20 day notice[1]	**20 day notice[1]**	**6 day notice[1]**
Footnotes:			
1	The day the notice is posted/mailed/sent is not included in the number provided, but the day of the hearing is included in the number provided (considered a full day of notice).		

Review and Sign-Off:

☑	Jason Bradford, AICP, Planning Division Manager
☑	Holly Prather, AICP, Director of Community Development
☑	Marv Falconburg, AICP, Assistant City Manager of Development
☑	Margaret Brubaker, City Attorney
☑	Manuel Esquibel, City Manager

PLANNING DIVISION STAFF REPORT

To:	Mayor and City Council, through City Manager, Manuel Esquibel
Prepared By:	Jason Bradford, AICP, Planning Division Manager
Reviewed By:	Holly Prather, AICP, Community Development Director
Date Prepared:	June 11, 2014
Requested Action:	Hold a public hearing, consider a resolution for the Final Plat and Development Agreement and grant a site specific development plan to vest the Final Plat and Development Agreement for a period of three (3) years for the FMC Surface Technologies Facility, with Conditions.

PURPOSE:

The Applicant, Brad Cushard, Partner, Central Development, LLC, on behalf of the Owner, SMBC Leasing and Finance, Inc., is requesting approval of the FMC Surface Technologies Facility Final Plat and Development Agreement. The application also includes a request to vest the Final Plat and Development Agreement for a period of three (3) years.

In accordance with the *Municipal Code*, Section 17-40-210, Final Subdivision Plat, a Final Plat application shall be presented to the City Council, at a public hearing, along with a resolution approving, approving with conditions, or denying the Final Plat application. As outlined in Section 17-56 of the *Land Use and Development Code*, a request for a site specific development plan vested property right must be reviewed by the City Council at a public hearing and approved by resolution.

SUMMARY:

The Property is generally located east of US-85, west of WCR 27 (N. Main Street), and approximately half-way between WCR 6 (Crown Prince Blvd.) to the north and WCR 4 (New Energy Drive) to the south. The Final Plat would create one (1) platted lot approximately 19.12 acres in size. The Final Plat also shows the location of several easements, a right-of-way dedication for future expansion of N. Main Street (WCR 27) and a trail, and an access easement for an adjacent parcel.

The Development Agreement associated with the Final Plat recognizes FMC Technologies, Inc. as the agent of the owner, SMBC Finance and Leasing, Inc., which is authorized to undertake the responsibilities for development of the Project. The Development Agreement includes various provisions, including a requirement to provide a financial guarantee for the design and construction of improvements to N. Main Street, along the eastern boundary of the Property; to construct a left-turn-lane in N. Main Street; to provide and maintain an access drive for the property to the west; and for the proper maintenance of the drainage facility on site. The

Developer will pay the drainage impact fees at the time a regional facility is constructed by the City. In addition, the Developer is required to work with the Fulton Ditch Company to resolve any issues associated with the proximity of the Development to the Ditch.

The three (3) year vesting period would provide a measure of assurance that the Final Plat and Development Agreement will remain in effect for an adequate period of time to develop the site.

PUBLIC NOTICE:

Though the Municipal Code only requires public notice for a Final Plat be mailed to adjacent property owners at least five (5) days prior to the public hearing, notice of the public hearing was also published in the *Brighton Standard Blade*, on May 28, 2014 and posted on the Property on June 11, 2014, all for no less than five (5) days prior to the date of the public hearing. Also, in accordance with Section 24-65.5-101 et. seq., all mineral rights owners were notified of the initial public hearing regarding the surface development of the Property at the Planning Commission public hearing on June 10, 2014. No public comments have been received by staff, as of the date of this staff report.

CRITERIA BY WHICH COUNCIL MUST CONSIDER THE ITEMS:

Section 17-40-210, Final Subdivision Plat, of the *Land Use and Development Code* states that a Final Plat shall be reviewed for conformance with the Zoning Ordinance and the Subdivision Regulations.

The *Comprehensive Plan*, Figure 4: Future Land Use Plan, shows the Property as being appropriate for "Employment." The "Employment" area is intended to provide land uses that provide jobs, such as light industrial and office uses. The Property is also located within the "North Brighton Employment Area," which is intended to create primary jobs along the North Main Street corridor.

Section 17-56, Vested Property Rights, of the *Land Use and Development Code* states that a vested property right gives the property owner "the right to undertake and complete the development and use of property under the terms and conditions of a site specific development plan." If vesting rights are granted, the property owners would be ensured that any future rezoning or land use action by the City will not adversely affect their development or use of the property.

STAFF ANALYSIS:

Staff finds that the Final Plat Application complies with the Subdivision Regulations found in Section 17-40-210 and with the I-1 (Light Industrial) zone district regulations found in Section 17-16-110 of the *Land Use and Development Code*. Staff also finds that the Final Plat complies with the policies of the *Comprehensive Plan*, Figure 4: Future Land Use Plan designation of the Property as being appropriate for "Employment" land uses and with Figure 5: Planning Areas, which shows the Property within the "North Brighton Employment Area." Based on the preliminary information provided to the City, the Developer expects that project will employee approximately 60 full time employees. The Development Agreement has been reviewed and approved by the City's Development Review Committee and City Attorney. In addition, staff

finds that the request for vested property rights is in conformance with the provisions outlined in Section 17-56, Vested Property Rights, of the *Land Use and Development Code*.

Based upon these findings, staff recommends approval of the Final Plat and Development Agreement and recommends approval of the Final Plat and Development Agreement as a Site-Specific Development Plan. However, there are four requirements that remain outstanding; therefore, the draft resolution has been prepared that would approve the Final Plat and Development Agreement and approve the Final Plat and Development Agreement as a Site-Specific Development Plan, to be vested for a period of three (3) years, subject to the stated conditions.

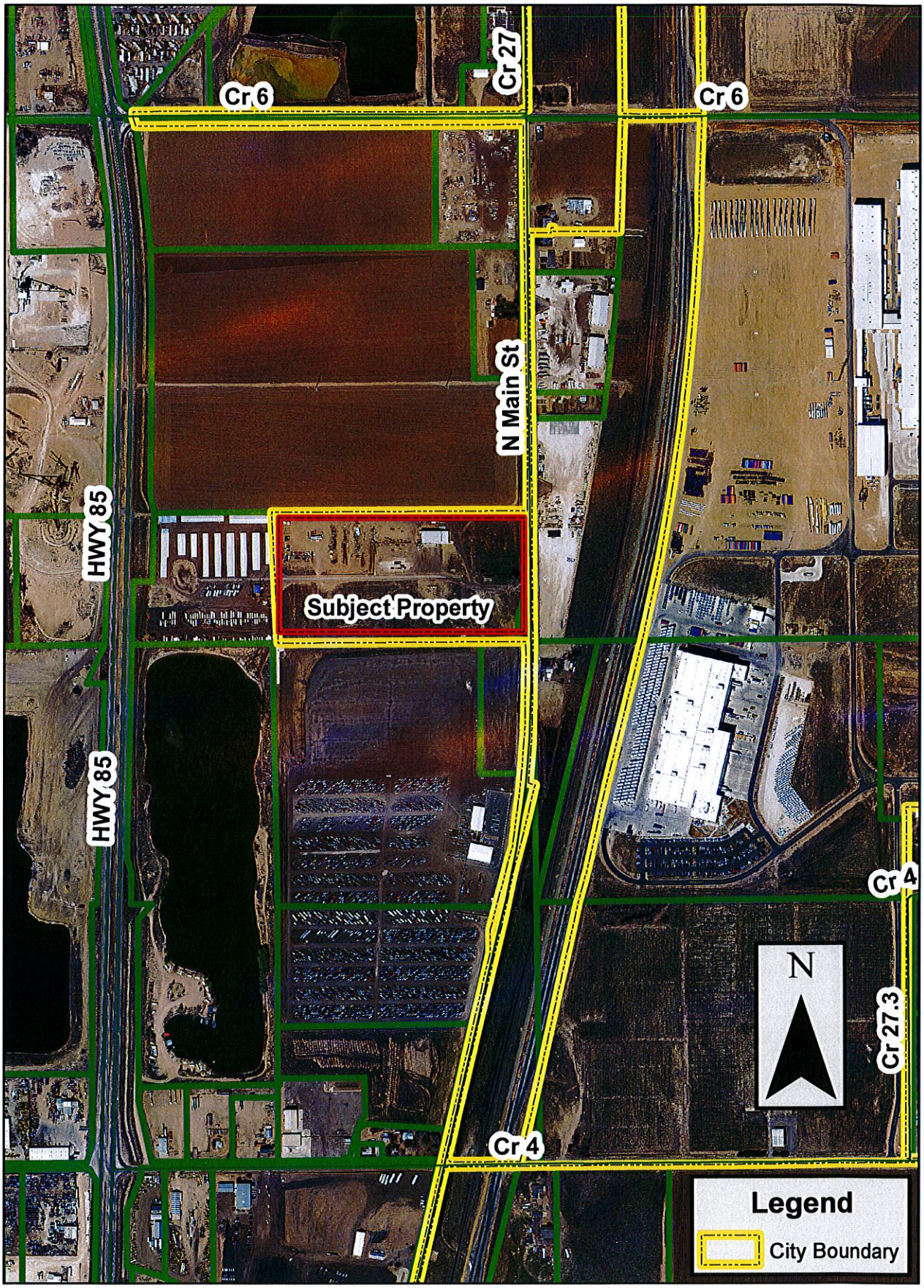
OPTIONS FOR COUNCIL'S CONSIDERATION:

- Approve the resolution.
- Deny the resolution with specific findings of fact to justify the denial.

ATTACHMENTS:

- Final Plat
- Vicinity Map
- Draft Resolution approving the Final Plat and Development Agreement and Site Specific Development Plan Vested Property Rights
- Development Agreement (Exhibit C of the Final Plat and Development Agreement Resolution)

FMC Surface Technologies Facility
Vicinity Map



CITY OF BRIGHTON CITY COUNCIL RESOLUTION

FMC SURFACE TECHNOLOGIES FACILITY
FINAL PLAT AND DEVELOPMENT AGREEMENT
AND
SITE SPECIFIC DEVELOPMENT PLAN VESTED PROPERTY RIGHT

RESOLUTION NO.: _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING A FINAL PLAT AND DEVELOPMENT AGREEMENT, WITH SPECIFIC CONDITIONS AS MORE PARTICULARLY SET FORTH HEREIN, FOR AN APPROXIMATELY 19.12 ACRE PROPERTY COMMONLY KNOWN AS THE "FMC SURFACE TECHNOLOGIES FACILITY," GENERALLY LOCATED IN SECTION 30, TOWNSHIP 1 NORTH, RANGE 66 WEST OF THE SIXTH (6TH) PRINCIPAL MERIDIAN, CITY OF BRIGHTON, COUNTY OF WELD, STATE OF COLORADO; APPROVING THE FINAL PLAT AND DEVELOPMENT AGREEMENT AS A SITE SPECIFIC DEVELOPMENT PLAN VESTED PROPERTY RIGHT, TO BE VESTED FOR A PERIOD OF THREE (3) YEARS, TO EXPIRE ON JUNE 17, 2017; AND AUTHORIZING THE MAYOR TO EXECUTE SAID DEVELOPMENT AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, SMBC Leasing and Finance, Inc., (the "Owner"), owns an approximately 19.12 acre property, generally located east of US-85, west of WCR 27 (N. Main Street), and approximately half-way between WCR 6 (Crown Prince Blvd.) to the north and WCR 4 (New Energy Drive) to the south, and more specifically described in **EXHIBIT A**, attached hereto (the "Property"); and

WHEREAS, Brad Cushard, Partner, Central Development, LLC (the "Applicant"), on behalf of the Owner, has requested approval of the FMC Surface Technologies Facility Final Plat (the "Final Plat"), attached hereto as **EXHIBIT B**, and has requested approval of the Final Plat as a Site-Specific Development Plan to be vested for a period of three (3) years; and

WHEREAS, the Applicant, on behalf of the Owner, has requested approval of the FMC Surface Technologies Facility Development Agreement (the "Development Agreement"), attached hereto as **EXHIBIT C**, and has requested approval of the Development Agreement as a Site-Specific Development Plan to be vested for a period of three (3) years; and

WHEREAS, the City Council approved an ordinance (Ordinance No. 2164) to annex the Property into the City boundary, on December 17, 2013; and

WHEREAS, the City Council approved an ordinance (Ordinance No. 2165) to zone the Property as I-1 (Light Industrial), on December 17, 2013; and

WHEREAS, the City Council finds and declares that a Notice of Public Hearing was mailed to adjacent property owners on May 28, 2014, no less than five (5) days prior to the date of the City Council public hearing pursuant to the *Land Use and Development Code*; and

WHEREAS, the City Council finds and declares that, although not required by the *Land Use and Development Code*, a Notice of Public Hearing was posted on the Property on June 11, 2014 and published in the *Brighton Standard Blade* on May 28, 2014, for no less than five (5) days prior to the date of the City Council public hearing; and

WHEREAS, the Applicant has certified that all applicable Mineral Owners associated with the Property were provided proper and lawful written notice of the Planning Commission public hearing regarding the Preliminary Plat, held on June 10, 2014, which was the initial public hearing regarding surface development of the Property, for no less than thirty (30) days prior to said public hearing, in accordance with Title 24, Section 65.5 of the Colorado State Statutes (C.R.S.); and

WHEREAS, the City Council conducted a public hearing, during a regular meeting, held on June 17, 2014, to review and consider a Final Plat Application and Development Agreement for the Property; and

WHEREAS, the Council has reviewed the Final Plat and Development Agreement pursuant to the applicable provisions and criteria set forth in the *Land Use and Development Code*; and

WHEREAS, the City Council finds and declares that the Final Plat and Development Agreement comply with the requirements of the Final Plat and Development Agreement procedures and regulations, provides consistency with the purpose and intent of the regulations, provides compatibility with surrounding area, is harmonious with the character of the neighborhood, is not detrimental to the immediate area, is not detrimental to the future development of the area, and is not detrimental to the health, safety, or welfare of the inhabitants of the City; and

WHEREAS, according to Section 17-56-50, Duration; termination; waiver; abandonment, of the *Land Use and Development Code*, the City Council may enter into an agreement with the landowner to vest a Site-Specific Development Plan for a period of three (3) years; and

WHEREAS, according to the *Land Use and Development Code*, Section 17-56-20 5(a), a Final Plat, as shown in **EXHIBIT B**, attached hereto, and a Development Agreement, as shown in **EXHIBIT C**, attached hereto, may be considered as a Site Specific Development Plan; and

WHEREAS, notice of the Site Specific Development Plan vested property right request was combined with the public notices for the Final Plat, as required by Section 17-56-30 of the *Land Use and Development Code*, Notice and Hearing; and

WHEREAS, at the time of the public hearing on June 17, 2014, the Applicant had not provided the required signed Development Agreement, as required by the *Land Use and Development Code*; and

WHEREAS, at the time of the public hearing on June 17, 2014, the Applicant had not provided the required signed Mylar Final Plat to be used for recording purposes, as required by the *Land Use and Development Code*; and

WHEREAS, at the time of the public hearing on June 17, 2014, the Applicant had not provided the City with a Letter of Credit for the public improvements described in the Schedule of Public Improvements (Exhibit B) of the Development Agreement, as required by the Development Agreement and as required by the *Land Use and Development Code*; and

WHEREAS, at the time of the public hearing on June 17, 2014, the Applicant had not provided the City with an approval letter or a crossing permit from the Fulton Ditch Company for the proposed improvements that will have an impact upon the ditch; and

WHEREAS, the Applicant acknowledges and understands that it must provide (i) a finalized and executed copy of a signed Development Agreement, (ii) a signed Mylar Final Plat, (iii) a letter of credit for the public improvements described in the Development Agreement and more specifically described in Exhibit B (Schedule of Public Improvements) of the Development Agreement, and (iv) an approval letter or a crossing permit from the Fulton Ditch Company for the proposed improvements that will have an impact upon the ditch; and

WHEREAS, the City Council of the City of Brighton has reviewed the application for the Final Plat and Development Agreement Site Specific Development Plan Vested Property Right, and finds and declares that the application does follow the intent of the Brighton *Municipal Code*, the *Land Use and Development Code*, and the *Comprehensive Plan* in providing for the future of the City; and

WHEREAS, the City Council further finds and declares that it is desirable for the Property to be developed according to the Final Plat and Development Agreement, and that approval of the Site Specific Development Plan Vested Property Right will ensure the Property is developed according to the Final Plat and Development Agreement.

NOW, THEREFORE, IT IS RESOLVED, that the City Council of the City of Brighton, Colorado, does hereby make the following specific findings of fact and conclusions of law with respect to the Applications:

Section 1. That the Mayor is authorized to execute the Final Plat and Development Agreement for the Property, and in furtherance thereof, the City Manager and/or his designees are hereby authorized and directed to execute such additional documents, agreements and/or related instruments, and to take such acts as are reasonably necessary, to carry out the terms and provisions of the Agreement, for and on behalf of the City of Brighton; and

Section 2. That the FMC Surface Technologies Facility Final Plat, attached hereto as **EXHIBIT B**, is hereby approved, subject to the four (4) conditions specifically set forth in Section 5 below; and

Section 3. That the FMC Surface Technologies Facility Development Agreement, attached hereto as **EXHIBIT C**, is hereby approved, subject to the four (4) conditions specifically set forth in Section 5 below; and

Section 4. That the Site Specific Development Plan Vested Property Right for the FMC Surface Technologies Facility Final Plat and Development Agreement are hereby approved, subject to the four (4) conditions specifically set forth in Section 5 below, to be vested for a period of three (3) years, to expire on June 17, 2017; and

Section 5.

1. The Final Plat, Development Agreement, and Vested Property Rights shall not be deemed approved or effective until and unless a finalized, fully executed Development Agreement is provided to the City on or before September 17, 2014, as required by the Land Use and Development Code. Should the required Development Agreement not be provided to the City in a timely manner, the Final Plat, Development Agreement, and Vested Property Rights applications shall be deemed null and void and of no force and effect, and new applications and filing fees shall be required to be submitted to the City for development on the Property.

2. The Final Plat, Development Agreement, and Vested Property Rights shall not be deemed approved or effective until and unless a finalized, fully executed, Mylar Final Plat document, in a form found acceptable to the City and the Weld County Clerk and Recorder's Office, is provided to the City on or before September 17, 2014, as required by the Land Use and Development Code. Should the required Mylar Final Plat document that meet the requirements of the City and the Weld County Clerk and Recorder's Office not be provided to the City in a timely manner, the Final Plat, Development Agreement, and Vested Property Rights applications shall be deemed null and void and of no force and effect, and new applications and filing fees shall be required to be submitted to the City for development on the Property.

3. The Final Plat, Development Agreement, and Vested Property Rights shall not be deemed approved or effective until and unless a finalized, fully executed, Letter of Credit, in a form found acceptable to the City, for the public improvements described in the Schedule of Public Improvements (Exhibit B) of the Development Agreement, is provided to the City on or before September 17, 2014, as required by the Development Agreement and the Land Use and Development Code. Should the required Letter of Credit that meets the requirements of the City not be provided to the City in a timely manner, the Final Plat, Development Agreement, and Vested Property Rights applications shall be deemed null and void and of no force and effect, and new applications and filing fees shall be required to be submitted to the City for development on the Property.

4. The Final Plat, Development Agreement, and Vested Property Rights shall not be deemed approved or effective until and unless an approval letter or a crossing permit from the Fulton Ditch Company, for the proposed improvements that will have an impact upon the ditch, is provided to the City on or before September 17, 2014. Should the required approval letter or a crossing permit from the Fulton Ditch Company, for the proposed improvements that will have an impact upon the ditch not be provided to the City in a timely manner, the Final Plat, Development Agreement, and Vested Property Rights applications shall be deemed null and void and of no force and effect, and new applications and filing fees shall be required to be submitted to the City for development on the Property.

RESOLVED, this 17th day of June, 2014.

CITY OF BRIGHTON, COLORADO:

_____
Richard N. McLean, Mayor

ATTEST:

_____
Natalie Hoel, City Clerk

APPROVED AS TO FORM:

_____
Margaret Brubaker, Esq., City Attorney

EXHIBIT A
LEGAL DESCRIPTION

LOT B OF RECORDED EXEMPTION NO. 1471-30-1-RE2050, RECORDED OCTOBER 21, 1997 IN BOOK 1633 AS RECEPTION NO. 2575168, BEING A PART OF THE S1/2 OF THE S1/2 OF THE NE1/4 OF SECTION 30, TOWNSHIP 1 NORTH, RANGE 66 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO.

CONTAINS: 19.12 ACRES MORE OR LESS.

EXHIBIT B
FINAL PLAT

[Final Plat begins on the next page.]

FMC SURFACE TECHNOLOGIES FACILITY
SUBDIVISION PLAT

A PORTION OF THE SOUTH HALF (S1/2) OF THE SOUTH HALF (S1/2) OF THE NORTHEAST QUARTER (NE1/4) OF SECTION 30, TOWNSHIP 1 NORTH, RANGE 66 WEST, 6th P.M., CITY OF BRIGHTON, COUNTY OF WELD, STATE OF COLORADO.

PURPOSE STATEMENT

THE PURPOSE OF THIS SUBDIVISION PLAT IS TO CREATE A ONE LOT SUBDIVISION, AND TO GRANT EASEMENTS.

LEGAL DESCRIPTION AND EASEMENT GRANT:

THE UNDERSIGNED, BEING THE OWNER(S) OF A PARCEL OF LAND SITUATED IN SECTION 30, TOWNSHIP 1 NORTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF BRIGHTON, COUNTY OF WELD, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOT 1 OF RECORDED EXEMPTION NO. 1471-30-1-RE2004, RECORDED OCTOBER 21, 1997 IN BOOK 1633 AT RECEPTION NO. 2578166, BEING A PART OF THE SOUTH 1/2 OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 1 NORTH, RANGE 66 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO.

PARCEL CONTAINS 19.12 ACRES MORE OR LESS.

HAVE LAID OUT AND PLATTED THE ABOVE DESCRIBED LAND, UNDER THE NAME FMC SURFACE TECHNOLOGIES FACILITY, AND HEREBY GRANTS TO DAN BRENNAN LLC, PARCEL #1471301000022, PROPERTY ADDRESS OF 1577 CR 27, BRIGHTON, COLORADO 80603 SUCH EASEMENTS AS ARE CREATED HEREBY AND DEPICTED, OR BY NOTE, REFERENCED HEREON FOR THE RIGHT OF ACCESS, ON, ALONG AND IN ALL OF THE EASEMENTS, EITHER DIRECTLY OR THROUGH THE VARIOUS APPLICABLE SERVICE PROVIDERS AS MAY BE NECESSARY TO ACCOMPLISH THE INTENDED PURPOSES OF THE EASEMENT.

OWNERSHIP CERTIFICATE

IN WITNESS THEREOF, _____, HAS CAUSED THESE PRESENTS TO BE EXECUTED THIS ____ DAY OF _____, 2014.

OWNER: FMC TECHNOLOGIES, INC., A DELAWARE CORPORATION

BY: _____

NOTARY PUBLIC
STATE OF _____)
) SS
COUNTY OF _____)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS ___ DAY OF _____, 2014.

BY: _____

WITNESS MY HAND AND OFFICIAL SEAL

_____
NOTARY PUBLIC
MY COMMISSION EXPIRES: _____
NOTARY ADDRESS: _____

RECORDER'S CERTIFICATE

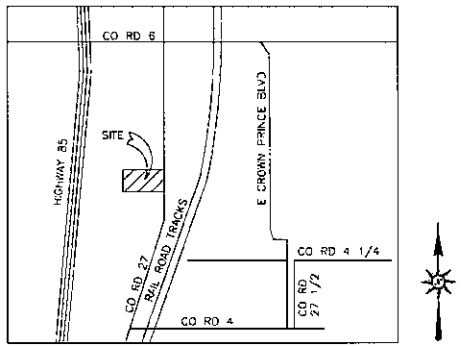
STATE OF COLORADO)
) SS
COUNTY OF ADAMS)

I HEREBY IDENTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN MY OFFICE ON THE _____ DAY OF _____, 2014 AT _____ O'CLOCK __M.

RECEPTION NO. _____

CLERK AND RECORDER
BY: _____

DEPUTY
BY: _____



VICINITY MAP

GENERAL NOTES:

1. NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATE SHOWN HEREON.

2. BASIS OF BEARINGS ARE BASED ON THE EAST LINE OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 30, TOWNSHIP 1 NORTH, RANGE 66 WEST, 6th P.M., WELD COUNTY, COLORADO, MONUMENTED ON THE NORTH BY A #5-1/4" ALUMINUM CAP IN RANGE BOX STAMPED "STANTEC PLS 25942" AND ON THE SOUTH BY A 3-1/4" ALUMINUM CAP IN RANGE BOX STAMPED "STANTEC PLS 25942". SAID LINE BEARS SOUTH 00°19'32" EAST.

3. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY R&R ENGINEERS-SURVEYORS, INC. TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD FOR ALL TITLE INFORMATION R&R ENGINEERS-SURVEYORS, INC. RELIED UPON COMMITMENT FOR TITLE INSURANCE NO. NCS-593368-CO, ISSUED BY FIRST AMERICAN TITLE INSURANCE COMPANY - NCS HAVING AN EFFECTIVE DATE OF JUNE 18, 2013 @ 5:00 PM.

4. THAT PORTION OF THE EXISTING 30' NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT (PER REC. NO. 2575188 & REC. NO. 2583974), LYING WITHIN LOT 1, BLOCK 1 AS SHOWN HEREON, TO BE VACATED PER THIS DOCUMENT.

5. A NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT, AS SHOWN HEREON, IS HEREBY GRANTED TO AND BETWEEN ALL LOTS WITHIN THE SUBDIVISION.

6. ALL EASEMENTS OTHER THAN 30' NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT, WITHIN THE BOUNDARY OF THIS SUBDIVISION, THAT WERE PREVIOUSLY GRANTED, WILL REMAIN.

7. ALL DISTANCES SHOWN HEREON ARE BASED UPON THE US SURVEY FOOT.

8. STORMWATER TREATMENT & DRAINAGE IMPROVEMENTS. MAINTENANCE OF ALL PRIVATE STORMWATER TREATMENT AND DRAINAGE IMPROVEMENTS IS A CONTINUING OBLIGATION OF THE LAND OWNER, ITS SUCCESSORS, AND ASSIGNS, TO ENSURE THE FACILITIES FUNCTION AS DESIGNED AND CONTINUE SERVING THE INTENDED FUNCTIONS IN PERPETUITY UNLESS THE CITY EXPRESSLY ACCEPTS THE RESPONSIBILITY IN WRITING. A NON-EXCLUSIVE ACCESS AND DRAINAGE EASEMENTS ARE HEREBY GRANTED TO CITY OF BRIGHTON FOR THE PURPOSE OF ACCESSING, INSPECTING, MAINTAINING, AND REPAIRING PRIVATE DRAINAGE FACILITIES IN THE EVENT THE LAND OWNER, ITS SUCCESSORS, AND ASSIGNS FAILS TO SATISFACTORILY MAINTAIN OR REPAIR SAID FACILITIES.

LAND USE TABLE

NET ACREAGE	19.12
GROSS ACREAGE	19.12
NUMBER OF LOTS	1
NUMBER OF BUILDABLE LOTS	1
NET ACREAGE FOR PUBLIC STREETS	N/A

ATTORNEY'S CERTIFICATE

I, _____, AN ATTORNEY AT LAW DULY LICENSED TO PRACTICE BEFORE THE COURTS OF RECORD OF COLORADO, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE TITLE OF ALL LANDS HEREIN ABOVE DEDICATED AND SHOWN UPON THE WITHIN PLAT AS FEE SIMPLE PUBLIC WAYS OF LAND AND THAT TITLE TO SUCH LAND IS THE DEDICATOR'S, FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES.

DATED THIS ____ DAY OF _____, 2014

_____
ATTORNEY AT LAW
REGISTRATION NO. _____

CITY OF BRIGHTON APPROVALS

APPROVED AS TO FORM BY THE CITY ATTORNEY OF THE CITY OF BRIGHTON, COLORADO, OR DESIGNEE

_____
CITY ATTORNEY DATE

APPROVED BY THE PLANNING COMMISSION OF THE CITY OF BRIGHTON, COLORADO, OR DESIGNEE

_____
PLANNING COMMISSION DATE

APPROVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, OR DESIGNEE

_____
CITY COUNCIL DATE

SURVEYOR'S CERTIFICATE

I, PAUL W. SMITH, A REGISTERED SURVEYOR IN THE STATE OF COLORADO, DO HEREBY IDENTIFY THAT THIS PLAT WAS MADE BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT THE ACCOMPANYING MAP ACCURATELY AND PROPERLY SHOWS SAID SUBDIVISION.

SIGNED THIS ____ DAY OF _____, 2014

COLORADO LICENSED PAUL W. SMITH 29430 PROFESSIONAL LAND SURVEYOR

_____
PAUL W. SMITH PLS #29430
FOR AND ON BEHALF OF
R & R ENGINEERS-SURVEYORS, INC.

INDEX OF SHEETS

SHEET 1 OF 2

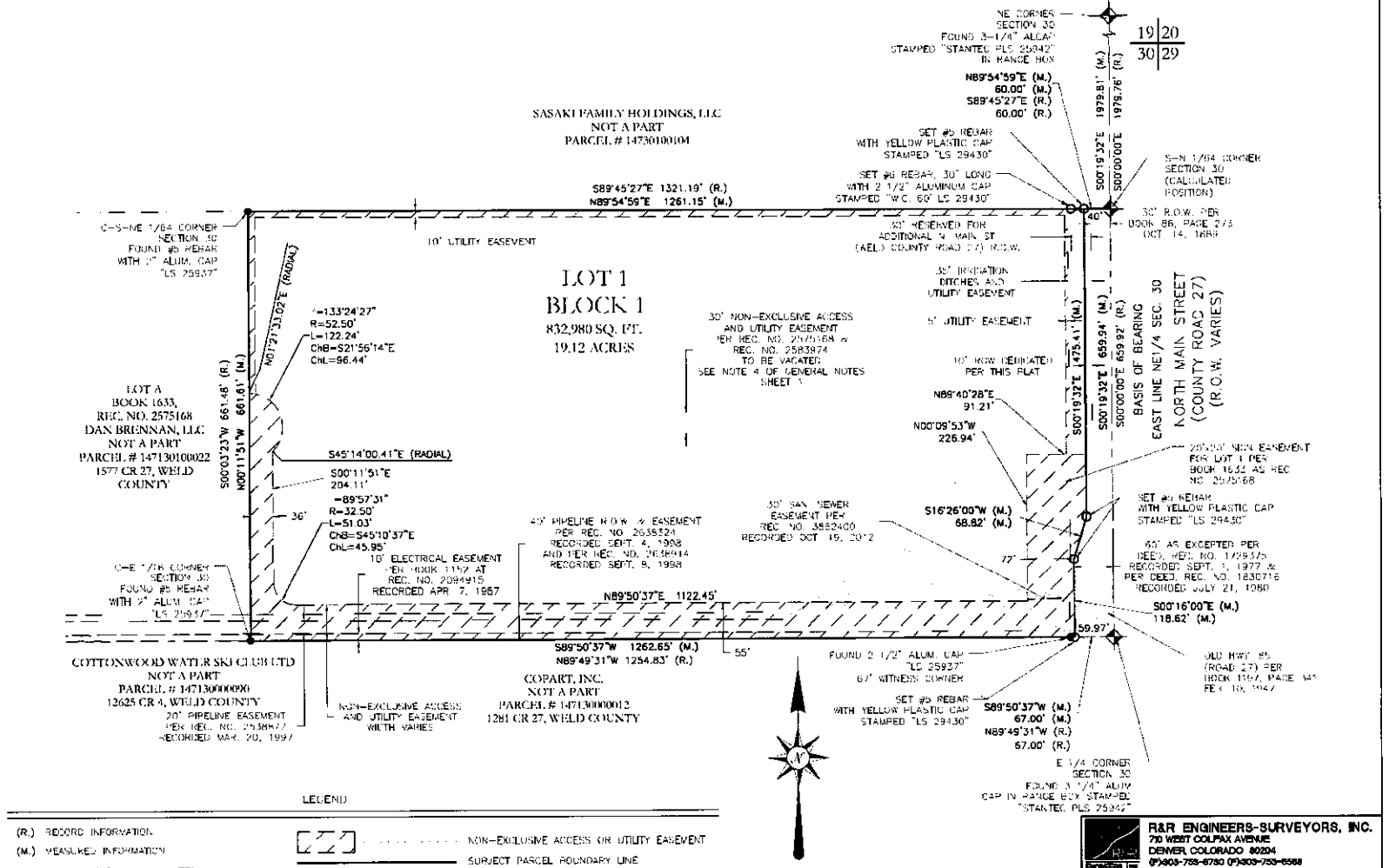
R&R ENGINEERS-SURVEYORS, INC.
770 WEST COLFAX AVENUE
DENVER, COLORADO 80204
(P)303-758-6730 (F)303-758-6586
WWW.RRENGINEERS.COM

REVISIONS
PRELIM. PLAT REVISIONS #1 - 2/21/2014
PRELIM. PLAT REVISIONS #2 - 5/13/2014

File No. C013102-PLAT
Date Drawn 01/13/14
Drawn By DF
Checked By TS/PS
Job No. C013102

FMC SURFACE TECHNOLOGIES FACILITY
SUBDIVISION PLAT

A PORTION OF THE SOUTH HALF (S1/2) OF THE SOUTH HALF (S1/2) OF THE NORTHEAST QUARTER (NE1/4) OF SECTION 30, TOWNSHIP 1 NORTH, RANGE 66 WEST, 6th P.M., CITY OF BRIGHTON, COUNTY OF WELD, STATE OF COLORADO.



LEGEND

- (R.) RECORD INFORMATION
- (M.) MEASURED INFORMATION
- MONUMENT FOUND, AS NOTED
- MONUMENT SET, AS NOTED
- SECTION CORNER, AS NOTED
- NON-EXCLUSIVE ACCESS OR UTILITY EASEMENT
- SUBJECT PARCEL BOUNDARY LINE
- ADJACENT PROPERTY BOUNDARY LINE
- RIGHT-OF-WAY LINE
- SECTION LINE
- EASEMENT LINE AS NOTED

R&R ENGINEERS-SURVEYORS, INC.
710 WEST COLFAX AVENUE
DENVER, COLORADO 80204
(P)303-753-6780 (F)303-753-6568
WWW.RRENGINEERS.COM

REVISIONS	File No. CD13102-PLAT
PRELIM. PLAT REVISIONS #1 - 7/21/2014	Date Drawn 01/21/14
PRELIM. PLAT REVISIONS #2 - 9/15/2014	Drawn By DP
	Checked By TS/MS
	Job No. CD13102

SHEET 2 OF 2

EXHIBIT C
DEVELOPMENT AGREEMENT

[Development Agreement begins on the next page.]

FMC SURFACE TECHNOLOGIES FACILITY SUBDIVISION

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20_____ by and between the CITY OF BRIGHTON, COLORADO, a home rule municipality of the County of **Weld**, State of Colorado (the "City") and SMBC Leasing and Finance, Inc., a Delaware corporation authorized to do business in Colorado (the "Developer"), acting through its Construction Agent, FMC Technologies, Inc., a Delaware corporation authorized to do business in Colorado, 5875 N. Sam Houston Parkway West, Houston, Texas 77086.

WHEREAS, FMC Technologies, Inc., as "Construction Agent" for Developer, shall have all rights and privileges to execute this Agreement and to take all action for the performance of Developer's obligations under this Agreement except as otherwise provided herein, in the name of and on the behalf of Developer; provided, however, that Construction Agent shall have no pecuniary liability under this Agreement, except that it will provide the Improvement Guarantees as set forth herein; and

WHEREAS, The Developer has submitted a Final Plat (the "Plat"), FMC Surface Technologies Facility Subdivision (the "Development" or "Property"), attached hereto as **Exhibit A** and incorporated herein by reference. Said Plat has been reviewed and approved by the City Council of the City of Brighton; and

WHEREAS, the City's development regulations require that the public improvement obligations be guaranteed in a form acceptable to the City; and

WHEREAS, the City's development regulations require the Developer to execute a development agreement with the City relative to improvements related to the Development;

NOW THEREFORE, in consideration of the foregoing Agreement, the City and the Developer (the "Parties") hereto promise, covenant, and agree as follows:

SECTION 1
GENERAL CONDITIONS

1.1 **Development Obligation.** Developer shall be responsible for the performance of the covenants set forth herein.

1.2 **Development Impact Fees and Other Fees.** Developer shall pay all fees related to development of the property described in the Plat(s) at the time of issuance of a building permit for any or all portions of the Development. The amount of the fees shall be the amount in effect at the time payment is made. Any amendment to the kinds of fees or the amounts of said fees enacted by the City after the date of this Agreement are incorporated into this Agreement as if originally set forth herein.

1.3 **Schedule of Improvements.** For this Agreement, the term "Schedule of Improvements" and/or "Phasing Plan(s)" shall mean a detailed listing of all of the public improvements, the design, construction, installation, and phasing of which are the sole responsibility of the Developer. The "Schedule of Improvements" may be divided into Phases of the approved Final Plat(s) for the Development, and shall specify, as to each improvement listed below, the type, the size, the general location, and the estimated cost of each improvement:

- Water Lines
- Sanitary Sewer Lines
- Storm Sewer Lines
- Drainage Retention/Detention Ponds
- Streets/Alleys/Rights-of-Way
- Curbs/Gutters
- Sidewalks
- Bridges and Other Crossings
- Traffic Signal Lights
- Street Lights
- Signs
- Fire Hydrants
- Guard Rails
- Neighborhood Parks/Community Parks
- Open Space
- Trails and Paths
- Street Trees/Open Space and/or Common Area Landscaping
- Irrigation Systems
- Wells
- Fencing/Retaining Walls
- Parking Lots
- Permanent Easements
- Land Donated and/or Conveyed to the City
- Value of Land Beneath All Infrastructure Improvements
- Value of Water Donated and/or Conveyed to the City

1.4 **Engineering Services.** Developer agrees to furnish, at its sole expense, all necessary engineering services relating to the design and construction of the Development and the public improvements set forth in the Schedule of Improvements and/or Phasing Plan(s) described in **Exhibit B**, attached hereto and incorporated herein by this reference (the "Improvements" and/or the "Schedule of Public Improvements" and/or the "Phasing Plan(s)"). Said engineering services shall be performed by, or under the supervision of, a Registered Professional Engineer, or a Registered Land Surveyor, or other professionals as appropriate, licensed by the State of Colorado, and in accordance with applicable Colorado law, and shall conform to the standards and criteria for public improvements as established and approved by the City as of the date of submittal to the City.

1.5 **Construction Standards.** Developer shall construct all Improvements required by this Agreement, and any other Improvements constructed in relation to the Development, in accordance with the plans and specifications approved in writing by the City, and with the approved Final Plat(s), and in full conformity with the City's construction specifications applicable at the time of construction plan approval.

1.6 **Development Coordination.** Unless specifically provided in this Agreement to the contrary, all submittals to the City or approvals required of the City in connection with this Agreement shall be submitted to or rendered by the City Manager or the Manager's designee, who shall have general responsibility for coordinating development with the Developer.

1.7 **Plan Submission and Approval.** Developer shall furnish to the City complete plans for all Improvements to be constructed in each Phase of the Development, as defined in Section 1.16 below, and obtain approval of the plans for each Phase prior to commencing any construction work thereon. The City shall issue its written approval or disapproval of said plan as expeditiously as reasonably possible. Said approval or disapproval shall be based upon standards and criteria for public improvements as established and approved by the City, and the City shall notify Developer of all deficiencies which must be corrected prior to approval. All deficiencies shall be corrected and said plans shall be resubmitted to and approved by the City prior to construction.

1.8 **Construction Acceptance and Warranty.** No later than ten (10) days after construction of all Improvements is completed, Developer shall request inspection of the Improvements by the City. If Developer does not request this inspection within ten (10) days of completion of the Improvements, the City may conduct the inspection without approval of the Developer. Developer shall provide "as built" drawings and a certified statement of construction costs no later than thirty (30) days after the Improvements are completed. If Developer has not completed the Improvements on or before the completion dates set forth in the Phasing Plan and/or Schedule of Public Improvements provided for in Section 1.16 herein, the City may exercise its rights to secure performance as provided in Section 9.1 of this Agreement. If the Improvements completed by Developer are satisfactory, the City shall grant "construction acceptance," which shall be subject to final acceptance as set forth herein. If the Improvements completed by Developer are unsatisfactory, the City shall provide written notice to Developer of the repairs, replacements, construction, or other work required to receive "construction acceptance." Developer shall complete the work within thirty (30) days of said notice, weather permitting. After Developer completes the

repairs, replacements, construction, or other work required, Developer shall request of the City a reinspection of such work to determine if construction acceptance can be granted, and the City shall provide written notice to Developer of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Developer's expense. If Developer does not complete the repairs, replacements, construction, or other work required within thirty (30) days of said notice, the City may exercise its right to secure performance as provided in Section 9.1 of this Agreement. The City reserves the right to schedule reinspections, depending upon the scope of deficiencies. **No Building Permits shall be issued by the Building Division prior to Construction Acceptance.**

1.9 **Maintenance of Improvements.** For a one (1) year period from the date of Construction Acceptance of any Improvements related to the Development, Developer shall, at its own expense, take all actions necessary to maintain said Improvements and make all needed repairs and replacements, which, in the reasonable opinion of the City, shall become necessary. If within thirty (30) days after Developer's receipt of written notice from the City requesting such repairs or replacements the Developer has not completed such repairs, the City may exercise its rights to secure performance as provided in Section 9.1 of this Agreement.

1.10 **Final Acceptance.** At least thirty (30) days before one (1) year has elapsed from the issuance of Construction Acceptance, or as soon thereafter as weather permits, Developer shall request a "final acceptance" inspection. At the time of said request, and as a condition thereof, the Developer shall submit to the City a revised and updated Schedule of Improvements, delineating all modifications to the original Schedule of Improvements and specifying the actual costs, rather than the estimated costs, of all Improvements listed on the Schedule of Improvements, including satisfactory documentation to support said actual costs. The City shall inspect the Improvements and shall notify the Developer in writing of all deficiencies and necessary repairs. After Developer has corrected all deficiencies and made all necessary repairs identified in said written notice, the City shall issue to Developer a letter of "final acceptance." If Developer does not submit an updated and revised Schedule of Improvements and correct all deficiencies and make repairs identified in said inspection to the City's satisfaction within thirty (30) days after receipt of said notice, weather permitting, the City may exercise its rights to secure performance as is provide in Section 9.1 of this Agreement. If any mechanic's liens have been filed with respect to the public Improvements, the City may retain all or a portion of the Improvement Guarantee up to the amount of such liens. If Developer fails to submit an updated and revised Schedule of Improvements or fails to have the Improvements finally accepted within one (1) year of the date of the issuance of Construction Acceptance, or if any of the Improvements are found not to conform to this Agreement or to applicable City standards and specifications, then Developer shall be in default of the Agreement and the City may exercise its rights under Section 9.1 of the Agreement.

1.11 **Reimbursement to the City.** The City may complete construction, repairs, replacements, or other work for Developer, pursuant to Sections 1.7, 1.8, 1.9 or 1.10 of the Agreement, with funds other than the Improvements Guarantee, in which event Developer shall reimburse the City within thirty (30) days after receipt of written demand and supporting documentation from the City. If Developer fails to so reimburse City, the Developer shall

be in default of the Agreement and the City may exercise its rights under Section 9.1 of this Agreement.

1.12 **Testing and Inspection.** Developer shall employ, at its own expense, a licensed and registered testing company, previously approved by the City in writing, to perform all testing of materials or construction that may be reasonably required by the City, and shall furnish copies of test results to the City, on a timely basis, for City review and approval prior to commencement or continuation of that particular phase of construction. In addition, at all times during said construction, the City shall have access to inspect the materials and workmanship of said construction. All materials and work not conforming to the approved plans and specifications shall be repaired or removed and replaced at Developer's expense so as to conform to the approved plans and specifications. All work shown on the approved Public Improvements Plans requires inspection by the appropriate department, such as the Streets & Fleet and Utilities Departments. Inspection services are provided Monday through Friday, except legal holidays, from 8:00 a.m. to 5:00 p.m., throughout the year. During the hours listed above, inspections shall be scheduled a minimum of 24 hours in advance. Requests for inspection services beyond the hours listed above shall be submitted a minimum of 48 hours in advance for approval. All requests for after-hours inspection services shall be made on a form provided by the Engineering Division. If the request is approved, the Developer shall reimburse the City for all direct costs of the after-hours inspection services. If the request is denied, the work shall not proceed after the hours listed above.

1.13 **Improvement Guarantees.** Developer shall submit to the City an Improvement Guarantee for all public Improvements related to each phase of the Development. Said guarantee may be in cash, bond, or a letter of credit in a form and substance shown in **Exhibit C**, attached hereto and incorporated herein by reference. Said guarantee, if a letter of credit or bond, shall not expire during the winter season (November - March). Said Improvement Guarantee shall include, but not by way of limitation, street construction, landscaping, fencing, streetlights, water, sewer, storm sewer and drainage improvements. Infrastructure permits shall be issued for only that phase of the Development for which said guarantees have been furnished. The total amount of the guarantee for each phase of development shall be calculated as a percentage of the total estimated cost, including labor and materials, of all public Improvements to be constructed in said phase of the Development as described in **Exhibit B**. The total minimum amounts are as follows:

A. Prior to City approval of Public Improvements Construction Plans – 115%
B. Upon Construction Acceptance prior to Final Acceptance – 15%
C. After Final Acceptance – 0%

In addition to any other remedies it may have, the City may, at any time prior to Final Acceptance, draw on any Improvement Guarantee issued, pursuant to this Agreement, if Developer fails to extend or replace any such Improvement Guarantee at least thirty (30) days prior to expiration of such Improvement Guarantee. If the City draws on the guarantee to correct deficiencies and complete any Improvements, any portion of said guarantee, not utilized in correcting the deficiencies and/or completing the Improvements, shall be returned to Developer within thirty (30) days after said Final Acceptance. In the event that the Improvement Guarantee expires, or the entity issuing the Improvement Guarantee

becomes non-qualifying, or the cost of the Improvements and related construction as reasonably determined by the City to be greater than the amount of the security provided, then the City shall furnish written notice to the Developer of the condition, and within thirty (30) days of receipt of such notice, the Developer shall provide the City with a substituted qualifying Improvements Guarantee or augment the deficient security as necessary to bring the security into compliance with the requirements of this Section 1.12. If such an Improvement Guarantee is not submitted or maintained, then Developer is in default of this Agreement and is subject to the provisions of Section 9.1 of this Agreement, as well as the suspension of the development activities by the City, including but not limited to, the issuance of infrastructure permits, building permits and certificates of occupancy.

1.14 **Indemnification and Release of Liability.** Developer agrees to indemnify and hold harmless the City, its officers, employees, agents, or servants and to pay any and all judgments rendered against said persons on account of any suit, action, or claim caused by, arising from, or on account of acts or omissions by the Developer, its officers, employees, agents, consultants, contractors and subcontractors, and to pay to the City and said persons their reasonable expenses, including, but not limited to, reasonable attorney's fees and reasonable expert witness fees incurred in defending any such suit, action, or claim; provided, however, that Developer's obligation herein shall not apply to the extent said action, suit, or claim results from any negligent or willful acts or omissions of officers, employees, agents or servants of the City or the conformance with the requirements imposed by the City. Said obligation of Developer shall be limited to suits, actions, or claims based upon conduct prior to "final acceptance," by the City, of the construction work. Developer acknowledges that the City's review and approval of plans for development is done in furtherance of the general public's health, safety, and welfare and that no immunity is waived and no specific relationship with, or duty of care to, the Developer or third parties is assumed by such approval.

1.15 **Insurance OSHA.** Developer shall, through contract requirements and other normal means, guarantee and furnish to the City proof thereof that all employees and contractors engaged in the construction of Improvements are covered by adequate workmen's compensation insurance and public liability insurance, and shall require the faithful compliance with all provisions of the Federal Occupational Safety and Health Act (OSHA).

1.16 **Phasing.** For purposes of this Agreement, the term "Phase" refers to a designated portion of property in the Development upon which construction of public Improvements (water, sewer, drainage, streets, etc.) occurs at one time. It is anticipated that the Development will be developed sequentially, in Phases, consistent with **Exhibit B**, attached hereto. The City hereby approves Developer's Phasing Plan, which is a part of the attached **Exhibit B**. The completion of each Phase of the Development, including public and private Improvements, shall be in accordance with said Phasing Plan and completion schedules, or City-approved modifications thereof. All modifications shall be in writing and signed by the City Manager or the Manager's designee.

1.17 **Water Dedications.** See Exhibits E & F.

SECTION 2
CONSTRUCTION OF IMPROVEMENTS

2.1 **Rights-of-way, Easements, and Permits.** Before City may approve construction plans for any Improvements, herein agreed upon, Developer shall acquire, at its own expense, and convey to the City all necessary land, rights-of-way and easements required by the City for the construction of the proposed Improvements related to the Development. All such conveyances shall be free and clear of liens, taxes, and encumbrances except those of record and shall be by Special Warranty Deed in form and substance acceptable to the City Manager or the Manager's designee. The City at the Developer's expense shall record all title documents. The Developer shall also furnish, at its own expense, an ALTA title policy, for all interest(s) so conveyed, subject to approval by the City Manager or the Manager's designee.

2.2 **Construction.** Developer shall furnish and install, at its own expense, all of the Improvements listed on the "Schedule of Improvements" attached as **Exhibit B**, in conformance with the drawings, plans, and specifications approved by the City prior to construction. If Developer does not meet the above obligations, then Developer shall be in default of the Agreement and the City may exercise its rights under Section 9.1 of the Agreement.

2.3 **Utility Coordination and Installation.** In addition to the Improvements described in **Exhibit B**, Developer shall also be responsible for coordination of, and payment for, the installation of on-site and off-site electric, street lights, natural gas, telephone, and other utilities. All utilities shall be placed underground, to the extent required by City Code or other applicable law.

2.4 **Reimbursement.** To the extent that roads, water lines, sewer lines, drainage channels, trails, crossings and other related facilities are constructed by Developer, for the benefit of landowners and persons other than Developer, the City, for a period of fifteen (15) years following the completion of construction of such Improvements, shall require other benefited landowners and persons to pay a pro rata reimbursement to the Developer. The actual costs of these off-site Improvements shall be submitted to the City after the Improvements are constructed by the Developer and accepted by the City. Property owners and/or developers submitting plats or development plans which are adjacent to or directly benefiting from these Improvements shall pay the required sums directly to the Developer before a plat for any portion of their property is recorded. The City agrees not to record said plat until the payments are made, but assumes no responsibility for and hereby assigns to Developer the right, if any, for collecting the reimbursements from the affected property owners.

2.5 **Reimbursement-City.** To the extent that public improvements are constructed by the Developer, for the benefit of landowners and persons other than the Developer, the City, for a period of fifteen (15) years following the issuance of Final Acceptance of such improvements, shall require other benefited landowners and persons to pay a pro rata reimbursement to the Developer as provided in Section 2.4 of this Agreement. All costs for the construction of the improvements must be fully paid by the Developer before the Developer is entitled to reimbursement under any agreement established hereunder. The

actual costs of the improvement(s) includes the actual cost of design and construction of the improvement(s), including the cost of over-sizing of utilities, and an adjustment for the current interest rate during the cost recovery period of the reimbursement agreement. The amount of the reimbursement to be paid shall not exceed the actual cost of the improvement(s) paid by the Developer, plus reasonable interest, as agreed to by the City and the Developer.

A. After the improvements are constructed by the Developer and Final Acceptance is issued by the City, the Developer shall submit to the City Manager, or the Manager's designee, within ninety (90) days from Final Acceptance for review and approval, documentation of the actual costs of these off-site improvements and a proposed plan for recovery of those costs, including the following:
    1. Final invoices from all contractors, subcontractors, engineers, architects, and consultants, which contain a description of work done, prices, fees, and all charges invoiced and paid for by the Developer, unless previously submitted;
    2. Copies of paid receipts or other satisfactory evidence of payment of the costs claimed for the improvement(s), unless previously submitted;
    3. A verified statement from the Developer and/or contractor, subcontractor, engineer, architect, or consultant certifying that final payment has been paid and/or received;
    4. As-built map or plan satisfactory to the City which shows:
        a. The location of the improvement(s) as constructed, unless previously submitted;
        b. The name and address of the owner of each property which the Developer asserts has or will be benefited by the improvement(s);
        c. The amount of frontage each property has adjacent to the improvement(s);
        d. The acreage and parcel number of each property, which the Developer asserts has or will be benefited by the improvement(s);
        e. A reference to the book and page and/or reception number from the county records where the information for each property was obtained;
        f. A proposed manner by which the actual costs of the improvement(s) will be determined for reimbursement by the owners and/or developers of the benefited properties; and
        g. Any other information deemed necessary by the City Manager, or the Manager's designee.
    5. If the foregoing information is not submitted by the Developer within the ninety (90) days after Final Acceptance, then all rights and claims for reimbursement shall be deemed waived, and reimbursement will thereafter be denied. If the information is submitted in a timely manner, the City Manager, or the Manager's designee will review it and, if approved, prepare a reimbursement agreement to be signed by the Developer and the City Manager.

B. The City Manager, or the Manager's designee, will review the reimbursement materials and plan for reasonableness and appropriateness of the costs claimed and the proposed cost recovery plan, and may request further documentation for any such costs. The City Manager, or the Manager's designee may make such adjustments, as the Manager or the Manager's designee, in their sole discretion, determines to be necessary if the costs are in excess of reasonable and necessary costs at then prevailing rates and/or the proposed cost recovery plan is not appropriate or reasonable. If City Manager or the Manager's designee does not notify the Developer in writing of any adjustments thereto within thirty (30) days after the materials and proposed plan were submitted, or if backup documentation is requested within thirty (30) days, within thirty (30) days after the requested back up documentation is submitted, then the costs and the recovery plan will be deemed approved as submitted.

C. The reimbursement agreement shall include, but not be limited to:
    1. A description of the improvement(s) for which the Developer will be reimbursed;
    2. A recitation of all reimbursable costs;
    3. A list of properties, owners and descriptions that are or will be benefited by the improvement(s);
    4. The manner or formula that will be applied to determine the amount of reimbursement owed by the owners or developers of benefited properties;
    5. Property owners and/or developers submitting plats or development plans for the identified benefited properties shall pay the required sums directly to the Developer before a final plat for any portion of their property is recorded;
    6. The City agrees not to approve a proposed development; record a final subdivision plat, or issue a building permit for an identified benefited property until the payments are made to the Developer, but assumes no responsibility therefore and hereby assigns to Developer the right, if any, for collecting the reimbursements from the benefited property owners and/or developers. Reimbursement of the Developer's costs is contingent on actual collection of the front foot charge by the Developer;
    7. The term of any reimbursement agreement, established hereunder, shall not exceed fifteen (15) years from Final Acceptance, regardless of whether or not the original costs have been fully reimbursed;
    8. The books and records of the Developer, relating to the actual costs of the improvement(s) for which the Developer seeks reimbursement, shall be open to the City at all reasonable times for the purpose of auditing and verifying the Developer's costs.

D. The Developer will be responsible for notifying all property owners who will be affected by the reimbursement agreement, by regular mail, postage prepaid, that a reimbursement request, which may affect their property, has been submitted to the City Manager.

E. It is the responsibility of the Developer or its successors or assigns to notify the City in writing of any changes in address for notices and other matters under Section 2.5 of this Agreement. If the City mails a notice of application for development, building permit or final plat, to the Developer or assigns by regular mail using the Developer, successor or assign's last known address in the City files, and no response is received within thirty (30) days, then the City shall be authorized to approve the application for approval of the development, building permit, or final plat and release the owner or developer of the benefited property from further reimbursement obligations and the Developer will forfeit all rights to reimbursement from the owner and/or developer of the specified property.

2.6 **Reimbursement - Shared Improvements.** Construction of shared improvements and related facilities may be achieved according to a reimbursement agreement whereby owner(s) of lands abutting or benefited by such improvements shall reimburse the Developer for their proportionate share of Developer's costs to extend improvements which benefit such intervening lands, in a form and content acceptable to the City Manager or the Manager's designee.

A. The Developer, successors, and/or assigns agree to use its best efforts and work in good faith to reach an agreement regarding reimbursement for such shared improvements, and assumes sole responsibility for the administration and collection of any and all moneys payable under shared improvements reimbursement agreement(s). A fully executed shared improvements reimbursement agreement shall be a condition precedent to the City's approval of an application for development, building permit, or approval and recording of a final plat, related to benefited subject to such reimbursement agreement(s).

B. If the Developer, successors, and/or assigns is unable to secure a fully executed shared improvements reimbursement agreement prior to the issuance of Final Acceptance, the City may set the amount of the reimbursement obligation as provided in Section 2.5 of this Agreement.

C. The cost recovery period in a shared improvement reimbursement obligation shall not exceed fifteen (15) years following the Final Acceptance of such improvement(s).

SECTION 3
STREET IMPROVEMENTS

3.1 **Definitions.** For the purposes of this Agreement, "street improvements" shall be defined to include, where applicable, but not limited to, all improvements within the right-of-way, such as bridges, sub-base preparation, road base, asphalt, concrete, seal coat, curb and gutter, medians, entryways, underground utilities, sidewalks, bicycle paths, traffic signs, street lighting, street name signs, landscaping, and drainage improvements.

3.2 **Street Signs, Traffic Signs and Striping.** The Developer will install, at the Developer's expense, street name signs on local, collector, and arterial streets, and stop signs, speed limit and other signs on local streets. Developer shall install, at its expense, signs and striping on collector and arterial streets in a manner reasonably approved by the City and

in accordance with the Model Traffic Code, as from time to time amended, and other applicable legal requirements.

3.3 **Streets.** All internal and external streets shall be constructed in accordance with the City of Brighton's approved *Transportation Master Plan and Public Works Standards and Specifications*, as the same be amended from time to time, and the approved construction Plans, and shall be constructed in accordance with the Phasing Plan, which is a part of the attached **Exhibit B**.

SECTION 4
PUBLIC LAND CONVEYANCE AND LANDSCAPING

4.1 **Public Land Conveyance.** Developer shall convey to the City all lands for public use as shown in the Final Plat(s), such as described in **Exhibit D**. Such conveyances shall be made after a Final Plat for all or any portion of the Development is approved by the City and before any such Final Plat is recorded. No Final Plat(s) shall be recorded or implemented until said conveyance is complete. Said conveyances shall be by special warranty deed in form and substance satisfactory to the City Manager or the Manager's designee. As part of its application for a final plat for all or any portion of the Development, the Developer shall provide to the City, for review, a title commitment for all lands designated for public use on the final plat. The City shall accept for public use only those lands which, pursuant to the title commitment, are free and clear of all liens, taxes, and encumbrances, except for ad valorem real property taxes for the current year and thereafter. The City shall not accept lands for public use with encumbrances, either surface or underground, as revealed on the title commitment or upon physical inspection, which limit the property for its intended public use. The Developer shall, at its sole expense, cause a title policy in conformance herewith to be delivered to the City at the time of the conveyance.

4.2 **Landscape Improvements.** For public lands and rights-of-way, Developer shall furnish to the City complete final landscape and irrigation plans for each Phase of development and obtain approval by the City Manager or the Manager's designee prior to commencement of construction. Developer shall furnish a final landscape plan to the City Manager or the Manager's designee for approval prior to installation of any landscape improvements.

SECTION 5
WATER MAINS

5.1 **Specifications.** All water mains, lines, and appurtenances thereto shall be constructed and installed, at the minimum, pursuant to City-approved plans, specifications, and the Schedule of Improvements, attached hereto as **Exhibit B**, including both on-site and off-site improvements.

SECTION 6
SEWER LINES

6.1 **Specifications.** All sewer lines and appurtenances thereto shall be constructed and installed, at the minimum, pursuant to City-approved plans, specifications and the Schedule of Improvements, attached hereto as **Exhibit B**, including both on-site and off-site improvements.

SECTION 7
OTHER IMPROVEMENTS

7.1 **Street Lights.** The total cost of street light installation, as shown on the approved construction plans for the Development, shall be the Developer's obligation. Developer shall cause, at its own expense, United Power, or the applicable utility company, to install all required street lighting pursuant to City plans and specifications. Said streetlights shall be consistent with the City standard streetlight and shall be installed concurrently with the streets on which they are located.

7.2 **Drainage Improvements.** Drainage improvements designed to reduce stormwater flows and minimize pollutants in urban runoff within the Development shall be constructed by Developer and, at the minimum, in accordance with plans and specifications approved by the City. Developer shall initiate no overlot grading until the City approves drainage improvement plans in writing. Drainage improvements shall not cause any damage to adjacent or downstream properties resulting from erosion, flood, or environmental impact during construction and/or after construction completion. . Drainage improvements for each lot shall be constructed by the owner of said lot, at the minimum, in accordance with plans approved at the time of Plat approval. Said plans shall conform to the City's then-existing floodplain regulations. Developer shall furnish copies of approved plans to subsequent purchasers (other than homeowners) of all lots within the Development.

7.3 **Stormwater Management during construction.** The Development shall be constructed in accordance to City of Brighton Municipal Code Chapter 14-2 Storm Drainage Ordinance and all applicable State and Federal stormwater regulations, as additionally described in **Exhibit H**

7.4 **Post-Construction Stormwater Management.** The Developer must comply with the City of Brighton Municipal Code Chapter 14-8 Storm Drainage Ordinance, as additionally described in **Exhibit H**. All private drainage facilities shall be operated, repaired, maintained, and replaced by the Developer according to the Maintenance Agreement for Private Drainage Structures to ensure facilities continue serving their intended function in perpetuity; unless or until the City relieves the Developer of that responsibility in writing. The Developer shall ensure access to drainage facilities at the site for the purpose of inspection and repair.

SECTION 8
SPECIAL PROVISIONS

8.1 **Special Provisions.** Special provisions regarding the Development are described in **Exhibit G** of this Agreement, attached hereto and incorporated herein by this reference.

SECTION 9
MISCELLANEOUS TERMS

9.1 **Breach of Agreement.** In the event that the Developer should fail to timely comply with any of the terms, conditions, covenants, and undertakings of this Agreement, or any provisions of the Brighton Municipal Code related to development, and if such noncompliance is not cured and brought into compliance within thirty (30) days of written notice of breach of the Developer by the City, unless the City in writing and in its sole discretion designates a longer period, then the City may draw upon the Improvement Guarantee and complete the Improvements at the Developer's expense. The Developer's expense shall be limited to the costs incurred by the City, as defined herein. Notice by the City to the Developer will specify the conditions of default. In the event that no Improvement Guarantee has been posted, or the Improvement Guarantee has been exhausted or is insufficient, then the City has the right to begin work on the Improvements at the expense of the Developer. If the City determines in its sole discretion that an emergency exists, such that the improvement must be completed in less than seven (7) days, the City may immediately draw upon the Improvement Guarantee and may complete the Improvements at Developer's expense. If the Improvement Guarantee is not available; in such event, the City shall use its best efforts to notify Developer at the earliest practical date and time. The City may also, during the cure period and until completion of the improvements in compliance with this Agreement, withhold any additional infrastructure permits, building permits, certificates of occupancy, or provision of new utilities fixtures or services. Nothing herein shall be construed to limit the City from pursuing any other remedy at law or inequity, which may be appropriate under City, state, or federal law. Failure to timely complete construction of Improvements, which is solely due to inclement weather, shall not be considered a breach of this Agreement. Any costs incurred by the City, including, but not limited to, administrative costs and reasonable attorney's fees, in pursuit of any remedies due to the breach by the Developer, shall be the responsibility of the Developer. The City may deduct these costs from the Improvement Guarantee.

9.2 **Recording of Agreement.** The City shall record this Agreement at Developer's expense in the office of the Clerk and Recorder in **Weld** County, Colorado, and the City shall retain the recorded Agreement.

9.3 **Binding Effect of Agreement.** This Agreement shall run with the land included within the Development and shall inure to benefit of and be binding upon the successors and assigns of the parties hereto.

9.4 **Assignment, Delegation and Notice.** Developer shall provide to the City, for approval, written notice of any proposed transfer of title to any portion of the Property and of the Development Agreement obligations to any successor, as well as arrangements, if any, for

delegation of the Improvement obligations hereunder. Developer and successor shall, until written City approval of the transfer of title and delegation of obligations, be jointly and severally liable for the obligations of Developer under this Agreement.

9.5 **Modification and Waiver.** No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of the provisions of any section of this Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.

9.6 **Addresses for Notice.** Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

City:
City of Brighton
City Manager
500 South 4th Avenue
Brighton, CO 80601

Developers:
SMBC Leasing and Finance, Inc.
277 Park Avenue
New York, NY 10172

FMC Technologies, Inc.
Attn: Leon Nguyen
5875 N. Sam Houston Parkway W.
Houston, TX 77086

With a copy to:
Margaret R. Brubaker, Esq.
Mehaffy Brubaker & Ernst, LLC
City Attorney
500 South 4th Avenue
Brighton, CO 80601

Applicant on behalf of owner:
Brad Cushard
Partner for Central Development, LLC
1801 Lawrence Street, Ste. 150
Denver, CO 80210

or to such other address or the attention of such person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

9.7 **Force Majeure.** Whenever Developer is required to complete construction, maintenance, repair, or replacement of improvements by an agreed-upon deadline, the time for performance shall be extended for a reasonable period if the performance cannot as a practical matter be completed in a timely manner due to Acts of God or other circumstances constituting force majeure or beyond the reasonable control of Developer.

9.8 **Approvals.** Whenever approval or acceptance of a matter is required or requested of the City, pursuant to any provisions of the Agreement, the City shall act reasonably in responding to such matter.

9.9 **Previous Agreements.** All previous written and recorded agreements, between the Parties, their successors, and assigns, including, but not limited to, any amended and restated

Annexation Agreement, shall remain in full force and effect and shall control this Development. If any prior agreements conflict with this Agreement, then this Agreement controls.

9.10 **Title and Authority.** Developer warrants to the City that it is the record owner for the Property within the Development or is acting in accordance with the currently valid and unrevoked power of attorney of the record owner hereto attached. The undersigned further warrant having full power and authority to enter into this Agreement.

9.11 **Severability.** This Agreement is to be governed and construed according to the laws of the State of Colorado. In the event that upon request of Developer or any agent thereof, any provision of the Agreement is held to be violate of the city, state, or federal laws and hereby rendered unenforceable, the City, in its sole discretion, may determine whether the remaining provisions will or will not remain in force.

9.12 **Agreement Status After Final Acceptance.** Upon Final Acceptance by the City of all improvements and compliance by Developer with all terms and conditions of this Agreement, and provided that no litigation or claim is pending relating to this Agreement, and the applicable statute of limitations has tolled for any potential claim, this Agreement shall no longer be in effect.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officials to place their hands and seals upon this Agreement the day and year first above written.

[Signatures begin on the next page]

DEVELOPER:
SMBC Leasing and Finance, Inc.

Signature: _____
By: FMC Technologies, Inc., as Construction Agent for
SMBC Leasing and Finance, Inc.

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____.

WITNESS my hand and official seal.

_____
Notary Public
My commission expires: _____

CITY OF BRIGHTON, COLORADO

By: _____
Richard N. McLean, Mayor

ATTEST:

_____
Natalie Hoel, City Clerk

Approved as to Form:

_____
Margaret R. Brubaker, City Attorney

EXHIBIT A

FMC SURFACE TECHNOLOGIES FACILITY SUBDIVISION

[Final Plat begins on the next page]

FMC SURFACE TECHNOLOGIES FACILITY
SUBDIVISION PLAT

A PORTION OF THE SOUTH HALF (S1/2) OF THE SOUTH HALF (S1/2) OF THE NORTHEAST QUARTER (NE1/4) OF SECTION 30, TOWNSHIP 1 NORTH, RANGE 66 WEST, 6th P.M., CITY OF BRIGHTON, COUNTY OF WELD, STATE OF COLORADO.

PURPOSE STATEMENT
THE PURPOSE OF THIS SUBDIVISION PLAT IS TO CREATE A ONE LOT SUBDIVISION, AND TO GRANT EASEMENTS.

LEGAL DESCRIPTION AND EASEMENT GRANT:
THE UNDERSIGNED, BEING THE OWNER(S) OF A PARCEL OF LAND SITUATED IN SECTION 30, TOWNSHIP 1 NORTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF BRIGHTON, COUNTY OF WELD, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOT 3 OF RECORDED EXEMPTION NO. 1471-30-1-REX0316, RECORDED OCTOBER 2ND, 1997 IN BOOK 1633 AT RECEPTION NO. 2575166, BEING A PART OF THE SOUTH 1/2 OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 1 NORTH, RANGE 66 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO

PARCEL CONTAINS 19.12 ACRES MORE OR LESS

HAVE LAID OUT AND PLATTED THE ABOVE DESCRIBED LAND, UNDER THE NAME FMC SURFACE TECHNOLOGIES FACILITY AND HEREBY GRANTS TO DAN BRENNAN, LLC, PARCEL #1571-30-0-00-029, PROPERTY ADDRESS OF 15471 CR 27, BRIGHTON, COLORADO 80603, SUCH EASEMENTS AS ARE CREATED HEREBY AND DEPICTED ON BY NOTE, REFERENCED HEREON, FOR THE RIGHT OF ACCESS, ON, ALONG AND IN ALL OF THE EASEMENTS, EITHER DIRECTLY OR THROUGH THE VARIOUS APPLICABLE SERVICE PROVIDERS, AS MAY BE NECESSARY TO ACCOMPLISH THE INTENDED PURPOSES OF THE EASEMENT.

OWNERSHIP CERTIFICATE

IN WITNESS THEREOF, _____ HAS CAUSED THESE PRESENTS TO BE EXECUTED THIS ____ DAY OF _____, 2014.

OWNER: FMC TECHNOLOGIES, INC., A DELAWARE CORPORATION

BY _____

NOTARY PUBLIC
STATE OF _____)
) SS
COUNTY OF _____)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS ___ DAY OF _____, 2014,

BY _____

WITNESS MY HAND AND OFFICIAL SEAL

_____
NOTARY PUBLIC
MY COMMISSION EXPIRES _____
NOTARY ADDRESS _____

RECORDER'S CERTIFICATE

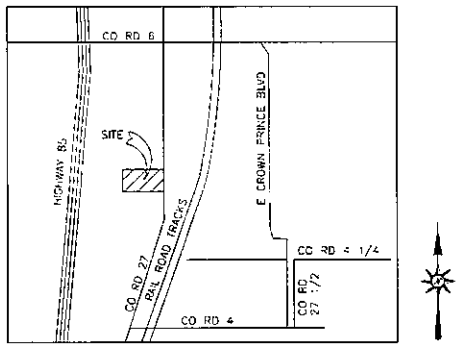
STATE OF COLORADO)
) SS
COUNTY OF ADAMS)

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN MY OFFICE ON THE _____ DAY OF _____, 2014 AT _____ O'CLOCK __M.,

RECEPTION NO. _____

CLERK AND RECORDER
BY: _____

DEPUTY
BY: _____



VICINITY MAP

GENERAL NOTES:

1. NOTICE ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATE SHOWN HEREON.

2. BASIS OF BEARINGS ARE BASED ON THE EAST LINE OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 30, TOWNSHIP 1 NORTH, RANGE 66 WEST, 6th P.M., WELD COUNTY, COLORADO, MONUMENTED ON THE NORTH BY A #3-1/4" ALUMINUM CAP IN RANGE BOX STAMPED "STANTEC PLS 29492" AND ON THE SOUTH BY A 3-1/4" ALUMINUM CAP IN RANGE BOX STAMPED "STANTEC PLS 29492", SAID LINE BEARS SOUTH 00°19'52" EAST.

3. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY R&R ENGINEERS-SURVEYORS, INC. TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD FOR ALL TITLE INFORMATION R&R ENGINEERS-SURVEYORS, INC. RELIED UPON COMMITMENT FOR TITLE INSURANCE NO. NCS-589356-CO, ISSUED BY FIRST AMERICAN TITLE INSURANCE COMPANY – NCS HAVING AN EFFECTIVE DATE OF JUNE 18, 2013 @ 5:00 PM

4. THAT PORTION OF THE EXISTING 30' NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT (PER REC. NO. 2579164 & REC. NO. 2581974), LYING WITHIN LOT 1, BLOCK 1 AS SHOWN HEREON, TO BE VACATED PER THIS DOCUMENT.

5. A NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT, AS SHOWN HEREON, IS HEREBY GRANTED TO AND BETWEEN ALL LOTS WITHIN THE SUBDIVISION.

6. ALL EASEMENTS, OTHER THAN 30' NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT, WITHIN THE BOUNDARY OF THIS SUBDIVISION, THAT WERE PREVIOUSLY GRANTED, WILL REMAIN.

7. ALL DISTANCES SHOWN HEREON ARE MADE UPON THE U.S. SURVEY FOOT.

8. STORMWATER TREATMENT & DRAINAGE IMPROVEMENTS MAINTENANCE OF ALL PRIVATE STORMWATER TREATMENT AND DRAINAGE IMPROVEMENTS IS A CONTINUING OBLIGATION OF THE LAND OWNER, ITS SUCCESSORS, AND ASSIGNS, TO ENSURE THE FACILITIES FUNCTION AS DESIGNED AND CONTINUE SERVING THE INTENDED FUNCTIONS IN PERPETUITY UNLESS THE CITY EXPRESSLY ACCEPTS THE RESPONSIBILITY IN WRITING. A NON-EXCLUSIVE ACCESS AND DRAINAGE EASEMENTS ARE HEREBY GRANTED TO CITY OF BRIGHTON FOR THE PURPOSE OF ACCESSING, INSPECTING, MAINTAINING, AND REPAIRING PRIVATE DRAINAGE FACILITIES IN THE EVENT THE LAND OWNER, ITS SUCCESSORS, AND ASSIGNS FAILS TO SATISFACTORILY MAINTAIN OR REPAIR SAID FACILITIES.

LAND USE TABLE

NET ACREAGE	19.12
GROSS ACREAGE	19.12
NUMBER OF LOTS	1
NUMBER OF BUILDABLE LOTS	1
NET ACREAGE FOR PUBLIC STREETS	N/A

ATTORNEY'S CERTIFICATE

I, _____, AS ATTORNEY AT LAW DULY LICENSED TO PRACTICE BEFORE THE COURTS OF RECORD OF COLORADO, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE TITLE OF ALL LANDS HEREIN ABOVE DEDICATED AND SHOWN UPON THE WITHIN PLAT AS FEE SIMPLE PUBLIC WAYS OR LAND AND THAT TITLE TO SUCH LANDS IS VESTED IN THE DEDICATORS, FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES.

DATED THIS ____ DAY OF _____, 2014

_____
ATTORNEY AT LAW
REGISTRATION NO. _____

CITY OF BRIGHTON APPROVALS

APPROVED AS TO FORM BY THE CITY ATTORNEY OF THE CITY OF BRIGHTON, COLORADO, OR DESIGNEE

_____
CITY ATTORNEY DATE

APPROVED BY THE PLANNING COMMISSION OF THE CITY OF BRIGHTON, COLORADO, OR DESIGNEE

_____
PLANNING COMMISSION DATE

APPROVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, OR DESIGNEE

_____
CITY COUNCIL DATE

SURVEYOR'S CERTIFICATE

I, PAUL A. SMITH, A REGISTERED SURVEYOR IN THE STATE OF COLORADO, DO HEREBY IDENTIFY THAT THIS PLAT WAS MADE BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT THE ACCOMPANYING MAP ACCURATELY AND PROPERLY SHOWS SAID SUBDIVISION.

SIGNED THIS ____ DAY OF _____, 2014

COLORADO LICENSED PAUL W. SMITH 29430 PROFESSIONAL LAND SURVEYOR

_____
PAUL W. SMITH PLS #29430
FOR AND ON BEHALF OF
R & R ENGINEERS-SURVEYORS, INC

INDEX OF SHEETS

SHEET 1 OF 2

R&R ENGINEERS-SURVEYORS, INC.
710 WEST COLFAX AVENUE
DENVER, COLORADO 80204
(P)303-753-6780 (F)303-753-6568
WWW.RRENGINEERS.COM

REVISIONS	File No. CD13102-PLAT
PRELIM. PLAT REVISIONS #1 – 2/21/2014	Date Drawn 11/7/13
PRELIM. PLAT REVISIONS #2 – 5/15/2014	Drawn By DF
	Checked By TS/PS
	Job No. CD13102

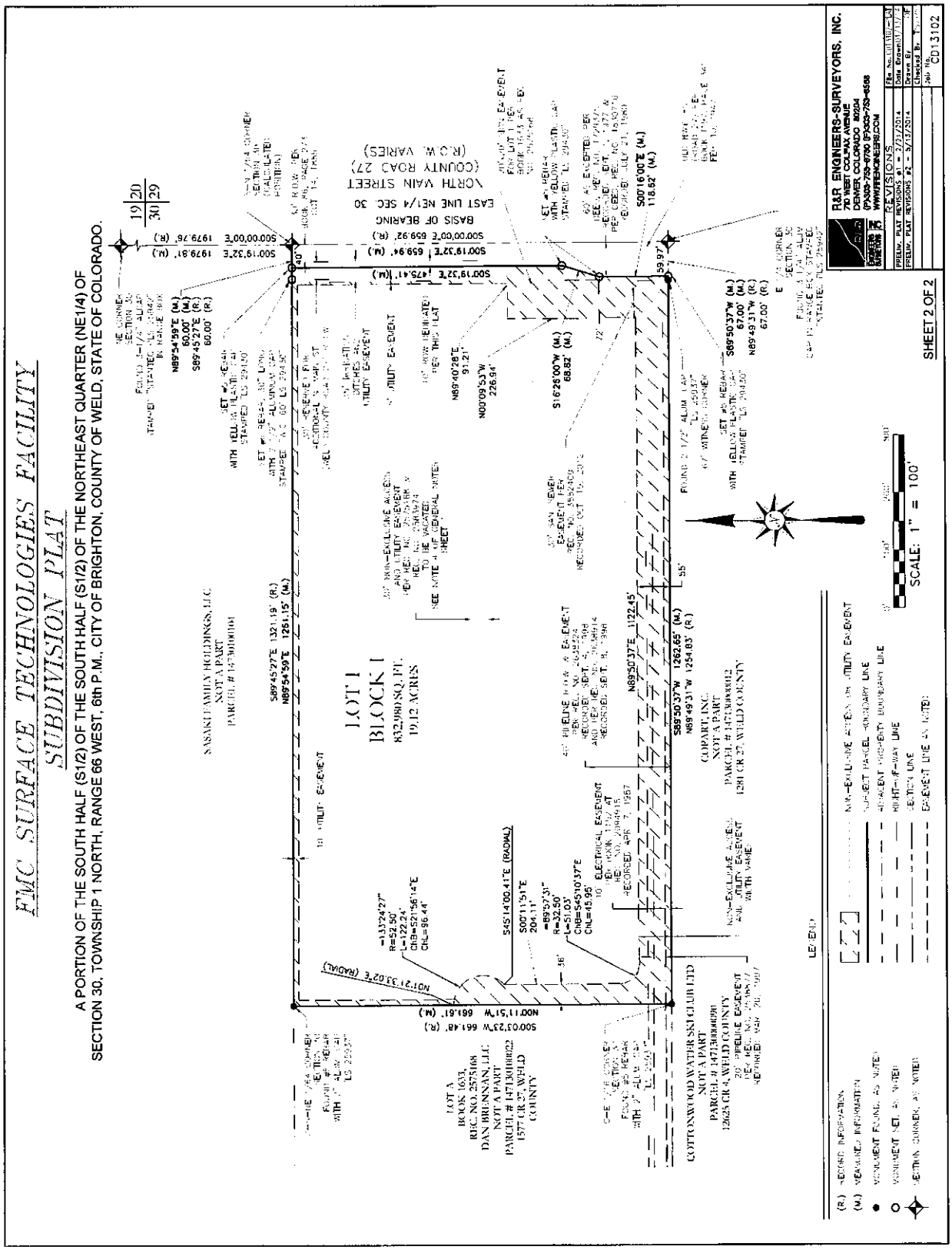

FMC SURFACE TECHNOLOGIES FACILITY
SUBDIVISION PLAT
A PORTION OF THE SOUTH HALF (S1/2) OF THE NORTHEAST QUARTER (NE1/4) OF
SECTION 30, TOWNSHIP 1 NORTH, RANGE 66 WEST, 6th P.M., CITY OF BRIGHTON, COUNTY OF WELD, STATE OF COLORADO.
LOT 1
BLOCK 1
832,980 SQ. FT.
19.12 ACRES
NORTH MAIN STREET
(COUNTY ROAD 27)
(R.O.W. VARIES)
EAST LINE NE1/4 SEC. 30
BASIS OF BEARING
S00°19'32"E 659.94' (M.)
S00°00'00"E 659.92' (R.)
N89°54'59"E 60.00' (M.)
N89°45'27"E 60.00' (R.)
S89°45'27"E 1321.19' (R.)
N89°54'59"E 1261.15' (M.)
S00°19'32"E 475.41' (M.)
S00°16'00"E 118.62' (M.)
S89°50'37"W 67.00' (M.)
N89°49'31"W 67.00' (R.)
S89°50'37"W 1262.65' (M.)
N89°49'31"W 1254.83' (R.)
N89°50'37"E 1122.45'
S45°14'00.41"E (RADIAL)
N01°21'33.02"E (RADIAL)
N00°11'51"W 661.61' (M.)
S00°03'23"W 661.48' (R.)
S00°11'51"E 204.11'
R=32.50'
L=51.03'
CHB=S45°10'37"E
CHL=45.96'
R=52.50'
L=122.24'
CHB=S21°56'14"E
CHL=96.44'
-13°24'27"
LOT A
BOOK 1633,
REC. NO. 2575168
DAN BRENNAN, LLC
NOT A PART
PARCEL # 1473308022
1577 CR 27, WELD
COUNTY
COTTONWOOD WATER SKI CLUB LTD
NOT A PART
PARCEL # 1473308090
12625 CR 4, WELD COUNTY
SASAKI-TAHOA HOLDINGS, LLC
NOT A PART
PARCEL # 1473000001
COPART, INC.
NOT A PART
PARCEL # 1473308002
1281 CR 27, WELD COUNTY
LEGEND
(R.) RECORD INFORMATION
(M.) MEASURED INFORMATION
MONUMENT FOUND, AS NOTED
MONUMENT SET, AS NOTED
SECTION CORNER, AS NOTED
NON-EXCLUSIVE AND UTILITY EASEMENT
SUBJECT PARCEL BOUNDARY LINE
ADJACENT PROPERTY BOUNDARY LINE
RIGHT-OF-WAY LINE
SECTION LINE
EASEMENT LINE AS NOTED
SCALE: 1" = 100'
SHEET 2 OF 2
RAR ENGINEERS-SURVEYORS, INC.
730 WEST COLFAX AVENUE
DENVER, COLORADO 80204
(P)303-753-9780 (F)303-753-9688
WWW.RARENGINEERS.COM
REVISIONS
PRELIM. PLAT REVISIONS #1 - 2/21/2014
PRELIM. PLAT REVISIONS #2 - 5/13/2014
Job No. CD13102

EXHIBIT B

SCHEDULE OF PUBLIC IMPROVEMENTS AND PHASING PLAN

Type of Improvements	Quantity/ Length	Unit Cost	Total Cost at Time of City Acceptance
North Main Street (WCR 27) Improvements	1	$500,000	$500,000

EXHIBIT C

IRREVOCABLE LETTER OF CREDIT FORM

This form serves as an example of Irrevocable Letter of Credit terms which the City of Brighton will accept. Although acceptable letters of credit terms may vary, the City will approve only letters of credit which comply with the requirements of the City's Development/Subdivision/Annexation Agreements. The City will not accept any Letter of Credit forms provided by lending institutions if they do not comply with the provisions of the City's identified Agreements, or if they impose undue restrictions on the City's ability to draw on the Letter of Credit for the purposes stated in the specified Agreement.

LENDER'S
LETTERHEAD

TO: City of Brighton, Colorado
500 South 4th Avenue
Brighton, CO 80601

Letter of Credit #: _____
Issuing Bank: _____
Date of Issue: _____
Expiration Date: _____
Amount: _____

Greetings:

We hereby establish this Irrevocable Letter of Credit in your favor for an amount up to the aggregate sum of _____ dollars ($_____), which is available against presentation of your draft or drafts drawn on us at sight for the account of _____ (Developer/Customer), to guarantee the construction of the required improvements, warranties, and satisfactory compliance of _____ (Developer/Customer) with the terms and conditions of the Agreement between the City and the Developer/Customer.

Partial drawings are permitted.

The sole condition for payment of any draft drawn under this Letter of Credit is that the draft be accompanied by a letter, on the City's letterhead, signed by the City Manager, stating the (Developer/Customer), its successor, transferee, or assign, has failed to perform in accordance with the _____ Agreement dated _____.

Demands for payment by the City pursuant to this Letter of Credit shall be deemed timely if deposited in the U.S. mail prior to its date of expiration, affixed with first-class postage, and addressed to the above letterhead address.

This Letter of Credit shall have an initial term of one (1) year from its Date of Issue, but shall be deemed automatically extended without amendment or other action by either party for additional periods of one year from the present or any future expiration date hereof, unless we provide the City with written notice, by certified mail, return receipt requested, at least ninety (90) days prior to the expiration date, that we do not wish to extend this Letter of Credit for an additional period. After receipt by the City of such notice, the City may draw hereunder, on or before the then-applicable expiration date, and for the then-remaining available amount by means of the City's sight draft, accompanied by a letter, on the City's letterhead, signed by the City Manager, stating the following:

We are in receipt of written notice from (NAME OF BANK) of its election not to renew its Letter of Credit No. _____ for an additional term of one (1) year and (Developer/Customer), its successor, transferee, or assign, is still obligated to the City under the _____ Agreement, and an acceptable replacement Letter of Credit has not been received.

We hereby agree with the City that:

(A) Such drafts will be processed in good faith and duly honored upon presentation to us;

(B) The exclusive venue for any action concerning this Letter of Credit shall be the District Court for **Weld** County, Colorado;

(C) The procedural and substantive laws of the State of Colorado shall apply to any such action;

(D) In the event it becomes necessary for the City to bring an action to enforce the terms of this Letter of Credit, or any action alleging wrongful dishonor of this Letter of Credit, and the City prevails in such action, the City shall be entitled to recover its reasonable attorney's fees and all costs and expenses associated with such action;

(E) If we bring an action against the City related directly or indirectly to this Letter of Credit, and the City prevails in such action, the City shall be entitled to recover its reasonable attorney's fees and other costs of such action; and

(F) The amount of funds available under this Letter of Credit may not be reduced except by payment of drafts drawn hereunder, or pursuant to written authorization given to us by the City.

This Letter of Credit is subject to the Uniform Commercial Code of the State of Colorado.

Very truly yours,

(NAME OF BANK)

By:_____
Signature of Authorized Signing Officer

_____
Print Name

STATE OF _____)
) ss
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of _____, 20____, by _____, the _____ (position of signatory) at _____ (bank).

My Commission Expires:

_____
Notary Public

SEAL

EXHIBIT D

DESCRIPTION OF PUBLIC USE LAND CONVEYANCE

1. **Not applicable, see paragraphs 4 and 5 of Exhibit G.**

EXHIBIT E

RESTRICTIVE DRY-UP COVENANT; GRANT OF EASEMENT; WARRANTY OF FIRST RIGHT TO DRY-UP CREDIT; AND AGREEMENT TO ASSIST

THIS COVENANT, AGREEMENT, WARRANTY AND EASEMENT are made and given this _____by _____ _____, _____ County, Colorado (hereinafter the "Owner"), and accepted by the City of Brighton, a municipal corporation of the County of **Weld**, State of Colorado (hereinafter "Brighton") on the _____.

Owner and/or Owner's assigns entered into an agreement with Brighton dated _____ whereby Owner and/or Owner's assigns agreed to transfer, and Brighton agreed to accept _____ share(s) of the Capital Stock of the _____ represented by stock certificate number(s) #'s _____ (the "Water Rights"). The Owner acknowledges Owner's understanding that the Water Rights are intended to be utilized by Brighton for municipal water uses, and/or for augmentation or exchange purchases, and that in order to effect such uses, the Water Rights will need to be changed in an appropriate proceeding before the District Court, Water Division No. 1, State of Colorado (hereinafter "Water Court") from irrigation to municipal, augmentation and/or exchange purposes.

The Water Rights have historically been used for the irrigation of lands owned by the Owner located in **Weld** County, Colorado. A description of the property where such irrigation use has historically occurred is attached to this covenant as Exhibit A, and is incorporated fully into this covenant by this reference. Owner further understands that the Water Court may require, as a term and condition of such change, that the lands historically irrigated as described in Exhibit A must be dried up and not further irrigated as a term and condition of allowing such change.

THEREFORE, in consideration of the willingness of Brighton to accept the Water Rights, and the making of such acceptance, as well as other good and valuable consideration, receipt of which is hereby acknowledged by Owner, Owner covenants and agrees as follows:

1. From and after the date hereof, except as may be otherwise allowed or required by this document, neither the Water Rights nor any other water shall be used in connection with the property described in Exhibit A without the written consent of Brighton, or its successors or assigns, having been first obtained, which consent may be withheld in Brighton's sole discretion.

2. Owner shall take any action necessary to eliminate any consumptive use of water for irrigation purposes on the property described in Exhibit A (the "land") as may be

determined and/or required by the Water Court or other court or tribunal of competent jurisdiction in the judgment and decree entered in any case involving the change or exchange of any of the Water Rights, or by the State Engineer, State of Colorado, in any approval by his office of a substitute water supply plan entered pursuant to the provisions of Section 37-92-308, Colorado Revised Statutes, as the same may be amended or replaced, during the duration of such plan.

3. Owner hereby grants to Brighton a non-exclusive perpetual easement for the purpose of access to and over the land as may be necessary to take actions to effectuate and enforce this covenant, including but not limited to the conducting of any monitoring or testing activity that may be required by the State Engineer or by any court or tribunal of competent jurisdiction to enforce this covenant or that may be a pre-condition for changing the Water Rights.

4. Unless otherwise required by any decree changing the Water Rights, or allowing such rights to be exchanged, or by the conditions of any substitute water supply plan as may be approved by the State Engineer, this covenant shall not prohibit the Owner or Owner's successors and assigns from irrigating the land with water rights which may in the future be transferred to such land and for such use through an appropriate Water Court proceeding, irrigating the land with water from a well or wells to be constructed in the future that are authorized to pump pursuant to a Water Court-approved plan for augmentation, irrigating the land with water that is not tributary to the South Platte River, to include not-nontributary water that is duly augmented, or irrigating the land with treated water supplied by a municipality or a water district.

5. Notwithstanding the provisions of paragraph 4 hereof, the land shall not be planted with, nor have upon it, any alfalfa or similar deep rooted crop, and any alfalfa or similar deep rooted crop presently existing, or which may exist in the future, shall be eradicated by Owner by deep tilling, chemical treatment or other means, unless otherwise allowed by Brighton in a signed writing..

6. This covenant shall burden, attach to and run with the property described in Exhibit A, and shall be binding not only upon the Owner, but also upon Owner's heirs, successors and assigns and any other persons or entities which may acquire an ownership or leasehold interest in all or any portion of the property described in Exhibit A. This covenant shall also run with and benefit the Water Rights. The terms and provisions of this covenant shall not expire and shall be perpetual unless specifically released in writing by Brighton or its successors and assigns. This covenant may be enforced by Brighton or by any party having any right, title or interest in the Water Rights or by the State Engineer of the State of Colorado, at any time in any action at law or in equity.

7. Owner further warrants and represents that this covenant shall entitle Brighton to the first and prior right to claim credit for the dry-up or nonirrigation of the property described in Exhibit A, and agrees to provide Brighton with all assistance Brighton

may reasonably require in regard to the above-referenced change of the Water Rights, including but not limited to the provision of testimony before the Water Court in any proceeding involving such change.

8. Owner agrees that it will at its sole expense take all steps necessary to accomplish the full and complete establishment of a self-sustaining dry land vegetative ground cover on all of the land within two years from the date of this covenant, and Owner shall thereafter cease all irrigation on such land unless and until a court decree, as referenced in paragraph 4 above, may be duly entered, and then irrigation shall be allowable only to the extent authorized in said paragraph 4. Provided, however, that Brighton may, in its sole discretion, agree in writing with the Owner to a modification of the conditions of this covenant to allow other irrigation practices, or to authorize the use of the lands that were historically irrigated for dry land agricultural practices. Further, Brighton may agree in writing that the need to establish a dry land vegetative ground cover on the historically irrigated lands is unnecessary since such lands have been developed, or the use of such lands has been otherwise so changed that future irrigation as historically occurred will no longer be possible. Any such future agreement shall be recorded in the official records of the County of **Weld** at Owner's expense. Owner further covenants and agrees that it will at its sole expense also take all steps necessary to accomplish revegetation of such lands, or otherwise eliminate irrigation, as may be required by court order or decree in the Water Court proceeding, if such requirements are different from what is required in this paragraph 8. If Owner should fail or refuse to do so, then Brighton shall have the right to come upon the land and take all measures to accomplish the required revegetation or other requirements imposed by the Water Court, and Owner shall reimburse Brighton fully for its costs and expenses in so doing. Owner further agrees that it will not take any actions that would violate such court order or decree. Brighton further agrees to duly record any final decree of District Court, Water Division 1, State of Colorado, or of any other entity or court with the authority to do so, approving the change of the Water Rights to municipal and other uses, at Brighton's expense and promptly upon its entry, in the County of **Weld.**

DEVELOPER:
SMBC Leasing and Finance, Inc.

_____

By: FMC Technologies, Inc., Construction Agent for
SMBC Leasing and Finance, Inc.

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,

_____
By:

WITNESS my hand and official seal:

_____
Notary Public

My commission expires: _____

CITY OF BRIGHTON, COLORADO

_____
By: Richard N. McLean, Mayor

ATTEST:

_____
Natalie Hoel, City Clerk

Approved as to Form:

_____
Margaret R. Brubaker, Esq., City Attorney

EXHIBIT F

WATER DEDICATION AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20_____ by and between the CITY OF BRIGHTON, COLORADO, a home rule municipality of the County of **Weld**, State of Colorado (the "City") and SMBC Leasing and Finance, a Delaware corporation authorized to do business in Colorado (the "Developer"), acting through its Construction Agent, FMC Technologies, Inc., a Delaware corporation authorized to do business in Colorado, 5875 N. Sam Houston Parkway West, Houston, Texas 77086.

WHEREAS, FMC Technologies, Inc., as "Construction Agent" for Developer, shall have all rights and privileges to execute this Agreement and to take all action for the performance of Developer's obligations under this Agreement except as otherwise provided herein, in the name of and on the behalf of Developer; provided, however, that Construction Agent shall have no pecuniary liability under this Agreement, except that it will provide the Improvement Guarantees as set forth herein; and

WHEREAS, Developer is the owner of the Property described in **Exhibit A**, attached hereto and by this reference made a part hereof; and

WHEREAS, in conjunction with the approval of the Preliminary Plat for the Property, DEVELPER will execute a Development Agreement; and

WHEREAS, as agreed to by the Developer at the time of annexation of the Property, and as required by the regulations and laws of the City, as a condition of Final Plat approval, the Developer must either dedicate acceptable water resources or pay the "without water rights" fee for the Development, as determined at the sole discretion of the City; and

WHEREAS, after reviewing its current inventory of water resources, together with other factors relating to the City's water resource needs, the City has determined that the Developer shall pay the "without water rights" fee.

NOW, THEREFORE, in consideration of the recitals and representations set forth herein, together with other good and sufficient consideration, the PARTIES AGREE AS FOLLOWS:

1. The DEVELOPER will pay at building permit issuance the *"Without Water Rights"* Fee for water taps in the amount as set forth in the City's Annual Fee Resolution, as the same may be amended from time to time, in effect at the time payment is made.

2. This Agreement shall be an attachment to the FMC Technologies, Inc. Subdivision and incorporated therein by references.

3. This Agreement is non-transferable and may only be modified or amended in writing, signed by the parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized officials to place their hands and seals upon this Agreement the day and year first above written.

DEVELOPER:

By: _____
Name
Title
Company Name

COUNTY OF WELD)
) SS
STATE OF COLORADO)

The foregoing Agreement was acknowledged before me this _____ day of

_____, 20_____. By: _____

WITNESS my hand and official seal.

By: _____
Notary Public

My Commission Expires: _____

CITY OF BRIGHTON:

By: _____
Richard N. McLean, Mayor

ATTEST:

By: _____
Natalie Hoel, City Clerk

EXHIBIT G

SPECIAL PROVISIONS

THE FOLLOWING SPECIAL PROVISIONS ARE HEREBY ATTACHED TO AND MADE A PART OF THAT CERTAIN FMC SURFACE TECHNOLOGIES FACILITY DEVELOPMENT AGREEMENT, BETWEEN THE CITY OF BRIGHTON, COLORADO, AND SMBC LEASING AND FINANCE, INC. SHOULD THERE BE ANY CONFLICT BETWEEN THE DEVELOPMENT AGREEMENT AND THE SPECIAL PROVISIONS SET FORTH IN THIS **EXHIBIT G**, THE TERMS OF THIS **EXHIBIT G** SHALL CONTROL.

1. **Definitions.** The following terms and definitions shall apply to this Exhibit G, Special Provisions:
   A. The term, WCR 27 shall mean Weld County Road 27 (a.k.a. North Main Street).
   B. The term, Brennan Property shall mean parcel number 147130100022 and addressed as 1577 Weld County Road 27, legally described as: 16004 W494' N2S2NE4 30 1 66 & W506' S2N2NE4 & PT E2W2 BEG NW COR NE4 W550' S1980' E550' N1980' TO BEG

2. **Temporary Uses.** Temporary uses refer to, but are not limited to, temporary sales office, temporary construction office, and construction yard. Temporary uses are allowed, with approval of a temporary use permit, for a period of one year, with renewal after that year determined by the Director of Community Development.

3. **City Regulations.** Developer agrees to develop the Property in conformance with any and all City Regulations and/or Ordinances, as the same may be subsequently amended from time to time, including, but not limited to: Ordinance #1650, the Zone District Regulations, and Ordinance #2040, which established the Industrial Design Standards, and the Public Works Design and Construction Standards and Specifications Manual, current edition.

4. **Park Dedication**. Because the Property is zoned for industrial purposes, the Developer shall not be required to satisfy the Parks requirements per Section 17-20-80 of the Land Use and Development Code, because the Property will be developed and used for industrial purposes. However, should the Property or any portion thereof be used for residential purposes in the future, the park dedication requirements set forth in Section 17-20-80 of the Land Use and Development Code, as amended, and in effect at the time of final plat shall apply.

5. **Open Space Land Dedication**. Because the Property is zoned for industrial purposes, the Developer shall not be required to satisfy the Open Space requirements per Section 17-44-100 of the Land Use and Development Code, because the Property will be developed and used for industrial purposes. However, should the Property or any portion thereof be used for residential purposes in the future, the open space requirements set forth in Section 17-

44-100 of the Land Use and Development Code, as amended, and in effect at the time of final plat shall apply.

6. **Trails Construction**. Developer, at its sole cost and expense, shall construct to completion a ten (10') foot concrete trail along the eastern edge of the Development and receive written acceptance thereof from the City, prior to the issuance of any building permit in accordance with the Final Development Plan (FDP), Final Plats, Open Space Plans, Construction Plans, and applicable City specifications in effect at the time of construction.

7. **Rights-of-Way Dedication and Construction**

A. North Main Street (WCR 27). North Main Street is adjacent to the western boundary of the Property and is designated as a modified minor arterial by the City of Brighton which requires a total of eighty feet (80') of right-of-way. Developer shall dedicate, at the time of final plat approval for all or any portion of the Property, or at the time of future expansion of North Main Street (whichever occurs first) the western one-half of right of way required for North Main Street as a modified minor arterial street, to wit: as measured from the center line of the existing right-of-way, the Developer shall dedicate at no cost to the City, an additional ten foot (10') wide right of way (in addition to the existing thirty foot (30') wide right of way) along the entire eastern boundary of the Property. Developer agrees to dedicate, at no cost to the City, additional rights of way as may be required at the time of final plat approval, to meet then current road designations or street designs.

B. Construction Requirements for North Main Street (WCR 27). Developer is responsible for the design and construction of the improvements for North Main Street (WCR 27) as a modified minor arterial street for the entire frontage of the Property, as specified in 7.A. above, to wit: twelve (12) feet of asphalt, and vertical curb and gutter, and a 10' wide concrete trail. The Developer has requested and the City has agreed to allow the Developer to submit a Letter of Credit with the City to cover the costs of such design and construction. Developer shall submit the Letter of Credit in the sum of Five-Hundred Thousand Dollars ($500,000), representing the agreed upon costs for the design and construction of the required improvements for North Main Street (WCR 27) as defined above. Said surety shall be in a form acceptable to the City upon the execution of this Development Agreement. The City is under no obligation to issue any permit for development of the property until such time as a surety is in place.

In addition, the Developer is responsible for the design and construction of a left turn lane and associated roadway widening for the southern entrance to the Property off of North Main Street (WCR 27), based on the anticipated traffic volumes and travel speeds associated with the Development. In the circumstance that the approved design of the turn lane is consistent with the ultimate design of North Main Street (WCR 27) and is included within the ultimate interior travel lanes of North Main Street (WCR 27), the actual costs incurred by the Development for the

construction of the left turn lane may be eligible for reimbursement from the applicable traffic impact fees paid by the Developer at the time of development of the Property. Under no circumstance shall the reimbursement exceed the amount of the applicable traffic impact fees paid by the Developer. Documentation evidencing the actual costs for the construction shall be submitted to the City for review and approval prior to any reimbursement.

8. **Construction and Maintenance of Drainage Infrastructure.** As described in the Final Plats, Construction Plans, and Landscape Plans, the Developer, at its sole cost and expense, shall construct to completion, the specified private drainage facilities including ponds, storm water culverts, and related drainage infrastructure.

The Developer acknowledges that maintenance of all private stormwater treatment and drainage improvement facilities is a continuing obligation of the land owner, its successors, and assigns, to ensure the facilities function as designed and continue serving the intended functions in perpetuity unless the City expressly accepts the responsibility in writing.

The purpose of drainage swales is to convey stormwater. At no time, will the swales be used as storage area.

Notwithstanding anything herein to the contrary, the City agrees that the Developer, or its successors or assigns, shall have no obligation to pay drainage impact fees to the City until such time as the Developer, or its successor in interest, upon notice from the City that connection to City drainage improvement facilities is required, ties into or connects its drainage improvement facilities to City stormwater drainage facilities and begins use of same. The amount of such drainage impact fees shall be the amount in effect at the time that Developer is required by the City to make such connection, and shall be paid in full within thirty (30) days of such notice.

9. **School Land Dedication/Transfer.** The Property is zoned Light Industrial (I-1). Because the Property is to be zoned for industrial purposes, the Developer shall not be required to satisfy the fee-in-lieu or land dedication requirements of the Intergovernmental Agreement Concerning Fair Contributions for School Sites Between the City of Brighton and Brighton School District 27J dated October 20, 2009, as amended, (the "Fair Contributions IGA"), or to be a participating development entity and enter into a Participant Agreement with the Brighton School District Capital Facility Fee Foundation for the funding of capital facilities, as these requirements are applicable to residential development. However, should the Property or any portion thereof be used for residential development in the future, the Developer and/or applicant for such use shall comply with all of the provisions of the Fair Contributions IGA, as the same may be amended.

10. **Easements and Existing Utilities.** As described in the Final Plats, and Construction Plans, the Developer will record easements as follows: A thirty foot (30') wide easement running north south along the east side of the property for an irrigation ditch(es) and utilities; A ten

foot (10') power line easement running east west along the southern side of the property, south of the gas line easement; A twenty foot (20') gas line easement running east west along the southern side of the property, north of the power easement; A twenty-four foot (24') access easement running east west, north of the power and gas line easements, for the purpose of ingress and egress of the parcel owner to the west. The Developer shall record easements with **Weld** County and provide copy of said records to the City before any building permits shall be issued.

Existing aboveground utilities located with future rights-of-way will be considered public improvements required by the City, and will be placed underground by the utility provider at no cost to the Developer if such language is provided in standard utility franchise agreements, or otherwise permitted by law.

Existing Well and Septic Systems. The Developer shall connect all of the Existing Structure(s) requiring water and sewer service to City water and sewer infrastructure and all existing wells and septic systems on the Property or serving the Property shall be abandoned and addressed to the satisfaction of the City and all applicable regulatory agencies. The Developer may not connect any existing shallow well(s) to any structures on the Property.

Water Rights and Dedications. At the time that the Developer connects to City water infrastructure and as a condition precedent thereto, Developer shall fulfill the Water Plant Investment Fee Water Resource Requirement and associated Dry-Up Covenant requirements as well as the Deep Well Aquifer Dedication requirements as set forth in paragraphs D and G of Section III and Exhibits "C" and "E" of the Annexation Agreement, to the satisfaction of the City.

Water Service at the time of Future Development. Until the 16" water main within North Main Street (WCR 27) has been looped or extended to connect to the 20" water transmission line located to the east of the Property within Weld County Road 2, Developer acknowledges that Future Development of the Property may be restricted to ensure fire and process water flow demands can be met. Prior to the approval of any Future Development of the Property, and as a condition precedent thereof, Developer shall provide a water model to the City to confirm fire and process water flow demands of any new development that is beyond the Existing Uses and Existing Structures for the Property can be met without causing negative impact on fire and process water flow demands of existing developments. "Future Development" as used herein, shall mean the submission of an application to the City for a final plat, Use-By-Right or Final Development Plan review, or other change of use of or structure in the Property from the Existing Uses and Structures.

11. **Water and Sewer Connection.** The City agrees to provide water and sewer service within North Main Street (WCR 27) where the existing service lines are adjacent to the Property. The Developer assumes the sole responsibility for the construction of, and the connection

to, all water, and sanitary sewer facilities necessary to serve the Property, and for the payment of all fees and costs associated therewith.

12. **Private Access.** As described on the Final Plats and Construction Plans, the Developer shall have two points of access along the east side of the Property along North Main Street and they shall be designated as private. The Developer grants the right to use these entry points for access to the parcel to the west, the Brennan Property.

The Developer shall at all times maintain in good condition the 24-foot wide shared access drive, that generally runs along the southern boundary of the Property and provides access from North Main Street to the Brennan property located directly west of the subject Property. A maintenance agreement, approved by both property owners, shall be in effect at all times and shall be kept on file with the City. Enforcement of the shared access drive maintenance agreement shall not be the responsibility of the City and shall be a civil legal agreement between the two parties. The shared access drive shall be maintained in such condition to allow for unfettered access at all times from North Main Street to the Brennan property.

13. **Ditch(es).** The Fulton Ditch is operated by the Fulton Ditch Irrigation Company, a third party entity. All crossings and/or required upgrades shall comply with their requirements and should address the full frontage of the property. The City's review will be limited to Development under the City's standard scope of review.

The Developer acknowledges and agrees that certain accommodations will be necessary in relation to the Development and the Fulton Ditch, and that the Developer will undertake discussions with the Fulton Ditch Company to confirm what improvements the Developer will be required to make. Because the extent of those improvements is not known at the time of executing this Development Agreement, the Developer has agreed to designate $500,000 in the Schedule of Improvements (Exhibit B) as a place holder for whatever Fulton Ditch improvements will be required. Once an agreement is reached with the Ditch Company, the Developer will submit plans for the agreed upon improvements to the City for review and approval, and once approved by the City, the Letter of Credit for the Schedule of Improvements (Exhibit B) will be adjusted accordingly to reflect the costs of said improvements. The Developer acknowledges and agrees that the above outlined process related to the Fulton Ditch must be completed prior to, and as a condition precedent to, the issuance of a building permit for the Development.

14. **FMC Technologies, Inc. as Construction Agent.** The City and the Developer acknowledge that FMC Technologies, Inc., a Delaware corporation ("FMC") is the Developer's construction agent pursuant to a separate written agreement between the Developer and FMC, a copy of which has been provided to the City. Until such time as the Developer notifies the City in writing that FMC is no longer the Developer's construction agent, the City shall not declare a default under this Agreement or exercise any remedies available under this Agreement, at law or equity, unless and until (x) the City

gives notice to FMC of the Developer's failure to perform or observe any of its obligations under this Agreement (which notice may be given contemporaneously with the City's notice to the Developer and which notice shall be addressed to FMC at the address FMC gives the Developer for notice purposes and sent by one or more of the means of giving notice specified in the Agreement), and (y) neither FMC nor the Developer cures such failure within thirty (30) days after FMC's receipt of such notice (provided, that if the cure of such failure reasonably requires more than thirty (30) days to complete, then no default shall be deemed to have occurred if the Developer or FMC promptly commences the cure of such failure within such thirty (30) days and thereafter diligently pursues such cure to completion). The Developer shall reasonably cooperate with FMC in effecting such remedy. The City shall accept such performance by FMC with the same force and effect as if furnished by the Developer. Without limiting the foregoing, the City agrees that FMC shall be permitted to submit the Improvement Guarantees required by the Agreement in its name; provided that FMC agrees in writing to be bound by the terms of the Agreement with respect to the Improvement Guarantees at the time of submittal.

EXHIBIT H

STORMWATER FACILITIES MAINTENANCE AGREEMENT FOR TREATMENT AND DRAINAGE FACILITIES LOCATED ON PRIVATE PROPERTY

THIS AGREEMENT is made this ___ day of _____, 20___, between _____, hereinafter referred to as the "Owner," and the City of Brighton, a Colorado municipal corporation, hereinafter referred to as "City."

RECITALS

WHEREAS, The ordinances and regulations of the City require that stormwater treatment and drainage facilities located on private property shall be operated, maintained, repaired, and replaced as necessary by the landowner and/or other responsible party, or their successors and assigns as agreed to by the City; and

WHEREAS, This Stormwater Facilities Maintenance Agreement is entered into by the parties to provide for the continued operation, maintenance, repair, and replacement as necessary of the stormwater treatment and drainage facilities located on the property described in **Exhibit H1**, by the Owner and/or other Responsible Party as identified in **Exhibit H2**; and

WHEREAS, This Agreement specifies the stormwater facilities management requirements necessary for the operation, maintenance, repair, or replacement of stormwater treatment and drainage facilities in accordance Chapter 14, Storm Drainage, of the Brighton Municipal Code as it is amended from time to time.

COVENANTS

THE PARTIES COVENANT AND AGREE AS MORE FULLY SET FORTH HEREIN.

Section 1. Subject Property

The subject property on which the stormwater treatment and drainage facilities to be operated, maintained, repaired or replaced by the Owner and/or the Responsible Party, is more fully described in **Exhibit H1**, attached hereto and by this reference is made a part hereof (hereinafter referred to as "Property").

Section 2. Facilities

The stormwater treatment and drainage facilities located on the Property to be operated, maintained, repaired or replaced by the Owner, and/or the Responsible Party, are more fully

described in **Exhibit H3**, attached hereto and by this reference is made a part hereof (hereinafter referred to as "Facilities").

Section 3. Site Specific Maintenance Plan

The Owner and/or Responsible Party agree that unless expressly assumed by the City in writing, the long-term routine and extraordinary maintenance of all Facilities installed on Property, are continuing obligations of the Owner and/or the Responsible Party in accordance with the terms of this Agreement and attached exhibits, including the Site Specific Maintenance Plan contained in **Exhibit H4**, attached hereto and which by this reference is made a part hereof (hereinafter referred to as "Plan").

Section 4. Obligations of Owner and/or Responsible Party

The Owner and the Responsible Party agree to the following:

A) All Facilities on the Property shall be maintained to meet erosion control, groundwater recharge, and stormwater runoff quantity and quality standards of Chapter 14, Storm Drainage, the Urban Drainage and Flood Control District's Urban Storm Drainage Criteria Manual Volume 3, and the City of Brighton Standards and Specifications Manual, Chapter 3, Drainage and Flood Control, as the same may be amended from time to time.

B) To operate, maintain, repair, and replace as necessary all facilities, including routine and non-routine maintenance, as the same may be required by this Agreement, the ordinances, rules and regulations of the City as they may be amended from time to time. Preventative and corrective maintenance repair and replacement shall be performed to maintain the function and integrity of the Facilities.

C) To keep the Facilities in good condition and repair, free of trash, debris, algae, standing water and other conditions that would constitute a nuisance. Such maintenance shall include, but not limited to slope stabilization, bank grading, sediment removal, mowing, repairs of mechanical and structural components, installation and maintenance of adequate landscaping as well as adequate provision for weed control and replacement of dead plant material. In the event that any detention or retention area within the Property contains standing water for more than ninety-six (96) continuous hours, the Owner and/or Responsible Party shall install an aeration or other appropriate mitigation system acceptable to the City, in order to minimize or prevent algae blooms, mosquitoes, and any other conditions that may constitute a nuisance or otherwise adversely affect the public health, safety and welfare.

D) The Owner and/or Responsible Party shall perform regular inspections in accordance with the Plan on all required Facilities and document maintenance, repair, and replacement needs to ensure compliance with the requirements of this Agreement.

E) Upon written notification by the Director of Utilities, the Owner and/or Responsible Party shall, at their own cost and within a reasonable time period determined by the Director, have an inspection of the Facilities conducted by a qualified professional; file with the Director a copy of the written report of inspection prepared by the professional; and, within the time period specified by the Director complete any maintenance, repair, or replacement work recommended in the report to the satisfaction of the Director.

F) Maintenance and inspection records shall be retained by the Owner and/or Responsible Party for at least five (5) years, and shall be readily available to the Director upon request.

G) All Facilities, whether structural and non-structural, shall be maintained and the Owner and/or Responsible Party in perpetuity, unless otherwise specified in writing by the Director.

H) To perform all additional maintenance, repair, and replacement as set forth in **Exhibit G of the Development Agreement**, Special Provisions, attached hereto and which by this reference is made a part hereof.

Section 5. City Access to Property

By the terms of this Agreement, the Owner irrevocably grants the Director complete access to the Facilities over and across the privately owned streets or additional areas within the Property, at any reasonable time, upon notice to undertake inspections, sampling, testing, repairs or other preventative measures required to enforce the terms of this Agreement at the Owner's expense. The City may, in its sole discretion, access the site without advanced notice for the purpose of inspection, sampling and testing of the facilities in an emergency circumstance to protect the public health, safety and welfare.

Section 6. Remediation

A) If the Director determines that operation, maintenance, and repair standards for the Facilities are not being met; or, maintenance, repairs, or replacement of Facilities is required, the Director may, in writing, direct the Owner and/or Responsible Party of the operation failures, needed maintenance, repair, replacement and/or the necessity to install any Facilities in order to keep the stormwater treatment and drainage facilities in acceptable working condition.

B) Should the Owner and/or Responsible Party fail within thirty (30) days of the date of the notice specified in 7. (A) above, the Director may enter the Property and perform or cause to be performed the required abatement and assess the reasonable cost and expenses for such work against the Owner and/or other Responsible Party as provided in Section. 14-2-100 City Inspections; Costs of Remediation, of the Brighton Municipal Code, as the same may be amended from time to time. Such costs may include the actual cost of any work deemed necessary by the Director, in order to comply with this Agreement, plus reasonable administrative, enforcement, and inspection costs.

C) The Owner and/or Responsible Party shall be jointly and severally responsible for payment of the actual cost of any work deemed necessary by the Director, in order to comply with this Agreement, plus reasonable administrative, enforcement, and inspection costs.

D) In the event the City initiates legal action occasioned by any default or action of Owner or a Responsible Party, then Owner and/or the Responsible Party agree to pay all costs incurred by City in enforcing the terms of this Agreement, including reasonable attorney's fees and costs, and that the same may become a lien against the Property.

Section 7. Notification of Change of Ownership and/or Responsible Party

The owner and the Responsible Party shall notify the City in writing of any changes in ownership as the same is defined herein or change in the Responsible Party within thirty (30) days of the effective date of the conveyance, change, or assignment and shall provide to the City a verified statement from the new Owner or Responsible Party that it has received a copy of this Agreement and the attached exhibits and assumes the responsibilities expressed hereunder. Should the Owner or Responsible Party fail to so notify the City of such change or provide the verified statement from the new Owner or Responsible Party, the conveyance, change, or assignment shall not relieve the new Owner and/or Responsible Party of any obligations hereunder.

Section 8. Notice

All notices provided under this Agreement shall be effective when personally delivered or mailed first class mail, postage prepaid and sent to the following addresses:

If Owner: *If Responsible Party:*

To Owner or Responsible Party as stated on **Exhibit H2.**

If City: *With Copy To:*

Director of Utilities
City of Brighton
500 South 4th Avenue
Brighton, CO 80601
303.655.2033

City Manager
City of Brighton
500 South 4th Avenue
Brighton, CO 80601
303.655.2001

Section 9. Definitions

A) **"Director"** means the Director of Utilities of the City of Brighton, or his or her designee.

B) **"Routine"** maintenance procedures includes, but are not limited to, inspections, debris and litter control; mechanical components maintenance, repair, and replacement; vegetation management; and, other routine tasks.

C) **"Non-routine procedures"** include, but are not limited to, those associated with removing accumulated sediments from stormwater quality facilities, restoration of eroded areas, snow and ice removal, fence repair or replacement, restoration of vegetation and long term structural repair, maintenance and replacement.

D) **"Owner"** means the legal or beneficial owner of the subject, including those persons holding the right to purchase or lease the Property or any other person holding proprietary rights in the Property as identified in **Exhibit H2**, including their agents, representatives, successors and assigns.

E) **"Responsible Party"** means the party, person or entity that is responsible for the maintenance of the facilities as required by this Agreement as identified in **Exhibit H2** including their agents, representatives, successors and assigns. Unless otherwise specified in this Agreement and the exhibits attached hereto, the obligations of the Responsible Party and the Owner are joint and several.

F) **"Stormwater treatment and drainage facilities"** include, but are not limited to, storm sewer inlets, pipes, culverts, channels, ditches, hydraulic structures, rip-rap, detention basins, micro-pools, water quality facilities and on-site control measure(s) to minimize pollutants in urban runoff as more fully set forth in **Exhibit H3**.

G) **"Unit Owner's Association"** means an association organized under C.R.S. §38-33.3-301 as a common interest community which may be a Responsible Party under the terms and conditions of this Agreement.

H) All the definitions and requirements of Chapter 14 of the Brighton Municipal Code are incorporated by reference into this Agreement.

Section 10. Miscellaneous

A) The burdens and benefits in this Agreement constitute covenants that run with the Property and are binding upon the parties and their heirs, successors and assigns. Owner will notify any successor to title of all or part of the Property about the existence of this Agreement. Owner will provide this notice before such successor obtains an interest in all or part of the Property. Owner will provide a copy of such notice to City at the same time such notice is provided to the successor.

B) The Owner shall record this Agreement in the records of the Clerk and Recorder of the appropriate and return a copy of the recorded Agreement to the City with the recording information reflected thereon.

C) The parties agree that the interpretation and construction of this Agreement shall be governed by the laws of the State of Colorado and venue for any dispute hereunder shall be in the District Court for Weld County, Colorado.

D) Except as provided in Section 7. (D) above, in the event of any litigation between the parties regarding their respective rights and obligations hereunder, the substantially prevailing party shall be entitled to receive reasonable attorney fees and costs incurred in connection with such action.

E) If any portion of this Agreement is declared by a court of competent jurisdiction to be void or unenforceable, such portion shall be deemed as severed from this Agreement, and the balance of this Agreement shall remain in effect.

F) Each of the parties hereto agrees to take all actions, and to execute all documents, that may be reasonably necessary or expedient to achieve the purposes of this Agreement.

G) This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

BRIGHTON:

CITY OF BRIGHTON, a Colorado municipal corporation

By: _____
Clint Blackhurst, Interim Director of Utilities

Attest:

By: _____
Natalie Hoel, City Clerk

Approved as to Form:

_____
Margaret R. Brubaker, Esq.
City Attorney

OWNER:

By: _____
Name: _____
Title: _____

RESPONSIBLE PARTY:

By: _____
Name: _____
Title: _____

EXHIBIT H1
See previous Exhibit A

EXHIBIT H2
Owner/Responsible Party Contact Information

SMBC Leasing and Finance, Inc.
277 Park Avenue
New York, NY 10172

FMC Technologies, Inc.
Attn: Leon Nguyen
5875 N. Sam Houston Parkway W.
Houston, TX 77086

EXHIBIT H3
Refer to Exhibit A for Facilities Description and Location Map

1) Pond:

2) Swales:

3) Storm sewer inlet pipes, boxes and Manholes, etc:

4) Emergency Spillways:

EXHIBIT H4
Site Specific Maintenance Plan
(Use UDFCD Recommendation)

In order for stormwater facilities to be effective, proper maintenance is essential. Maintenance includes both, routinely scheduled activities, as well as non-routine repairs that maybe required after large storms, or as a result of other unforeseen problems. Planning level maintenance for the individual stormwater facilities is included in this Site Specific Maintenance Plan

1) Retention/Detention Ponds:

Responsibilities:

The Owner is solely responsible for long-term maintenance of the Pond and any inlet or outlet infrastructure, including re-connection to the future outfall system.

Inspection

Inspect the pond at least annually. Note the amount of sediment in the forebay and look for debris at the outlet structure.

Debris and Litter Removal

Remove debris and litter from the pond as needed. This includes floating debris that could clog the outlet or overflow structure.

Aquatic Plant Harvesting

Harvesting plants will permanently remove nutrients from the system, although removal of vegetation can also resuspend sediment and leave areas susceptible to erosion. Additionally, the plants growing on the safety wetland bench of a retention pond help prevent drowning accidents by demarking the pond boundary and creating a visual barrier. For this reason, harvesting vegetation completely as routine maintenance is not recommended. However, aquatic plant harvesting can be performed if desired to maintain volume or eliminate nuisances related to overgrowth of vegetation. When this is the case, perform this activity during the dry season (November to February). This can be performed manually or with specialized machinery. If a reduction in cattails is desired, harvest them annually, especially in areas of new growth. Cut them at the base of the plant just below the waterline, or slowly pull the shoot out from the base. Cattail removal should be done during late summer to deprive the roots of food and reduce their ability to survive winter

Mosquito Control
Mosquito control may be necessary if the pond is located in proximity to outdoor amenities. The most effective mosquito control programs include weekly inspection for signs of mosquito

breeding with treatment provided when breeding is found. These inspections and treatment can be performed by a mosquito control service and typically start in mid-May and extend to mid-September. The use of larvicidal briquettes or "dunks" is not recommended for ponds due to their size and configuration.

Sediment Removal from the Forebay

Remove sediment from the forebay before it becomes a significant source of pollutants for the remainder of the pond. More frequent removal will benefit long-term maintenance practices. For dry forebays, sediment removal should occur once a year. Sediment removal in wet forebays should occur approximately once every four years or when build-up of sediment results in excessive algae growth or mosquito production. Ensure that the sediment is disposed of properly and not placed elsewhere in the pond.

Sediment Removal from the Pond Bottom

Removal of sediment from the bottom of the pond may be required every 10 to 20 years (for retention ponds) or 15-25 years (for detention ponds) to maintain volume and deter algae growth. This typically requires heavy equipment, designated corridors, and considerable expense. Harvesting of vegetation may also be desirable for nutrient removal. When removing vegetation from the pond, take care not to create or leave areas of disturbed soil susceptible to erosion. If removal of vegetation results in disturbed soils, implement proper erosion and sediment control practices until vegetative cover is reestablished. For constructed wetland ponds, reestablish growth zone depths and replant if necessary.

Sediment Removal from the Trickle Channel, and Micropool

Remove sediment from the trickle channel annually. Sediment removal from the micropool is required about once every one to four years, and should occur when the depth of the pool has been reduced to approximately 18 inches. Small micropools may be vacuumed and larger pools may need to be pumped in order to remove all sediment from the micropool bottom. Removing sediment from the micropool will benefit mosquito control. Ensure that the sediment is disposed of properly and not placed elsewhere in the basin.

Erosion and Structural Repairs

Repair basin inlets, outlets, trickle channels, and all other structural components required for the basin to operate as intended. Repair and vegetate eroded areas as needed following inspection.

2) Swales:

Responsibilities

The Owner is responsible for long-term maintenance of any swale within the owner's property; the City is responsible for long-term maintenance of any swale within the City's Property.

Inspection

Grass buffers and swales require maintenance of the turf cover and repair of rill or gully development. Healthy vegetation can often be maintained without using fertilizers because runoff from lawns and other areas contains the needed nutrients. Periodically inspecting the vegetation over the first few years will help to identify emerging problems and help to plan for long-term restorative maintenance needs. Inspect vegetation at least twice annually for uniform cover and traffic impacts. Check for sediment accumulation and rill and gully development.

Debris and Litter Removal

Remove litter and debris to prevent rill and gully development from preferential flow paths around accumulated debris, enhance aesthetics, and prevent floatables from being washed offsite. This should be done as needed based on inspection, but no less than two times per year.

Aeration

Aerating manicured grass will supply the soil and roots with air. It reduces soil compaction and helps control thatch while helping water move into the root zone. Aeration is done by punching holes in the ground using an aerator with hollow punches that pull the soil cores or "plugs" from the ground. Holes should be at least 2 inches deep and no more than 4 inches apart. Aeration should be performed at least once per year when the ground is not frozen. Water the turf thoroughly prior to aeration. Mark sprinkler heads and shallow utilities such as irrigation lines and cable TV lines to ensure those lines will not be damaged. Avoid aerating in extremely hot and dry conditions. Heavy traffic areas may require aeration more frequently.

Mowing

When starting from seed, mow native/drought-tolerant grasses only when required to deter weeds during the first three years. Following this period, mowing of native/drought tolerant grass may stop or be reduced to maintain a length of no less than six inches. Mowing of manicured grasses may vary from as frequently as weekly during the summer, to no mowing during the winter.

Irrigation Scheduling and Maintenance

Irrigation schedules must comply with the City of Brighton water regulations. The schedule must provide for the proper irrigation application rate to maintain healthy vegetation. Less irrigation is typically needed in early summer and fall, with more irrigation needed during July and August. Native grass should not require irrigation after establishment, except during prolonged dry periods when supplemental, temporary irrigation may aid in maintaining healthy vegetation cover. Check for broken sprinkler heads and repair them, as needed. Do not overwater. Signs of overwatering and/or broken sprinkler heads may include soggy areas and unevenly distributed areas of lush growth.

Completely drain and blowout the irrigation system before the first winter freeze each year. Upon reactivation of the irrigation system in the spring, inspect all components and replace damaged parts, as needed.

Fertilizer, Herbicide, and Pesticide Application

Use the minimum amount of biodegradable nontoxic fertilizers and herbicides needed to establish and maintain dense vegetation cover that is reasonably free of weeds. Fertilizer application may be significantly reduced or eliminated by the use of mulch-mowers, as opposed to bagging and removing clippings. To keep clippings out of receiving waters, maintain a 25-foot buffer adjacent to open water areas where clippings are bagged. Hand-pull the weeds in areas with limited weed problems.
Frequency of fertilizer, herbicide, and pesticide application should be on an as-needed basis only and should decrease following establishment of vegetation.
Sediment Removal

Remove sediment as needed based on inspection. Frequency depends on site-specific conditions. For planning purposes, it can be estimated that 3 to 10% of the swale length or buffer interface length will require sediment removal on an annual basis.
□□**For Grass Buffers**: Using a shovel, remove sediment at the interface between the impervious area and buffer.

□□**For Grass Swales**: Remove accumulated sediment near culverts and in channels to maintain flow capacity. Spot replace the grass areas as necessary.

Reseed and/or patch damaged areas in buffer, sideslopes, and/or channel to maintain healthy vegetative cover. This should be conducted as needed based on inspection. Over time, and depending on pollutant loads, a portion of the buffer or swale may need to be rehabilitated due to sediment deposition. Periodic sediment removal will reduce the frequency of revegetation required. Expect turf replacement for the buffer interface area every 10 to 20 years.

3) Storm sewer inlet pipes, boxes and manholes:

Responsibilities
The property owner is hereby accepting long-term maintenance responsibilities of storm sewer pipes, inlets and MH located in private property, if present.

Inspection
Frequent inspections of storm pipes, inlets and manholes are recommended in the first two years, and then annually. Look for debris and strong odors indications.

Debris and Litter removal
Remove silt and flow blocking debris as soon as possible. Remove sediment and waste collected from cleaning activities of the drainage system in appropriate containers to approved odd-site disposal areas. A vac-jet truck maybe needed to perform this work by properly trained personnel.

Erosion and Structural Repairs

Repair all structural components required for the pipe, inlet and manhole to operate as intended.

4) Emergency Spillways:

Responsibilities

The Owner is solely responsible for long-term maintenance of all ponds' spillways.

Inspection
Inspect annually.

Erosion and Structural Repairs

Repair all structural components required for the spillway to operate as intended.

City Council Agenda Item 7A

STAFF REPORT

Reference: **Ordinance to Approve the Leasing of City-Owned Mineral Rights in Sections 14, 24 and 25 to Synergy Resources Corporation**

To: **Mayor Richard N. McLean and Members of City Council**
Through: **Manuel Esquibel, City Manager**

Prepared By: **Matthew Sura, Esq., Oil and Gas Special Counsel**

Date Prepared: **June 11, 2014**

PURPOSE

Consider an ordinance approving and Oil and Gas Lease of City-owned minerals in Section 14, 24 and 25, Township 1 South, Range 67 West of the 6th P.M. (Adams County) to Synergy Resources Corporation. The Ordinance sets forth the chronology of events resulting in the necessity to proceed with the Lease, authorizes the Mayor to execute the Lease on behalf of the City, the City Clerk to attest thereto and the City Manager to execute other documents and take other actions necessary for the implementation of the Lease.

BACKGROUND

1. The City owns an estimated 1,400 acres of surface lands within and near the City of Brighton. For most of these lands, the City owns at least some portion of the mineral rights.
2. In the past year, the City has received numerous offers to lease portions of the City-owned minerals for oil and gas development.
3. Also during the past year, the City has been in the process of drafting amendments to its Municipal Code that would facilitate the development of oil and gas resources within the City of Brighton, while mitigating potential impacts to the City's groundwater resources as well as potential land use conflicts between such development and other land uses.
4. It has been the City's intention to have the new oil and gas regulations in place prior to considering leasing any City-owned lands.
5. Ward Petroleum filed four force-pooling applications affecting four sections of real property within and near the City. The Colorado Oil and Gas Conservation Commission (COGCC) scheduled its hearing on Ward's forced pooling applications for June 17, 2014.
6. Through negotiations with Ward, the City has until June 26, 2014 to either enter into a lease or be force pooled.
7. There are laws in Colorado that allow reluctant mineral owners within a drilling unit to be forced into becoming a partner in the oil and gas development of the unit. The "forced pooling" laws are found in C.R.S. § 34-60-116 and COGCC Rule 530.

8. Once a non-consenting mineral owner has been threatened to be forced pooled, they have three options: (i) lease the minerals; (ii) pay to be a partner in the development of the land; or (iii) allow themselves to be forced pooled.
9. Forced pooling allows the oil and gas operator to proceed with developing a drilling unit for oil and gas. By statute, the non-consenting mineral owners will receive 12.5% royalty on their minerals within the unit until the well has paid for itself twice ("paid out"). Once the well has 'paid out' (i.e., generated revenue as high as $10-12 million per well), the non-consenting mineral owners become partners in the well proportionate to their mineral interests. For example: if the unit is 100 acres, and the non-consenting mineral owner owns 10 acres, they will have a 10% ownership interest in the well.
10. Forced pooling requires the City to become a partner in the oil and gas business, thus exposing the City to liability for its percentage of the costs once the well has 'paid out'.
11. The benefit of leasing is that the City would receive its 20% royalty without having to deduct any costs and without having any long-term liability in the oil and gas operation.
12. Because the City does not want to get into the oil and gas business, the legal staff is recommending leasing its minerals rather than being forced pooled.
13. The Oil and Gas Lease with Synergy Resources Corporation that has been negotiated is fair to the City. The Lease terms exceed the apparent average rate in the area and the Lease itself is written to ensure that there will be no drilling on the City property (no-surface occupancy). Synergy Resources is also a well-known, reputable oil and gas operator.

FINANCIAL IMPACT

1. The fiscal impact to the City will be positive. The City will receive $3,750 / acre, with the potential revenue of as much as $525,000 if the City owns 140 mineral acres. The exact amount is dependent upon a final determination of the percentage interest that the City has in the subject minerals.
2. The royalty rate is 20% which has the potential to bring meaningful revenue to the City, depending on the number of wells drilled and the extent of the production from those wells. The production will likely be greatest in the first three years, then will start declining rapidly.

OPTIONS FOR CITY COUNCIL CONSIDERATION

The Council may take any of the following actions:

1. Approve the Ordinance on first reading by finding that entering into the Oil and Gas Lease is in the best interests of the City and authorize actions of the Mayor, City Clerk, and City Manager to execute and implement the Lease.
2. Reject the proposed Ordinance which would result in the City being subject to the forced pooling order.
3. Postpone consideration of the proposed Ordinance which would either require the City to consider an emergency ordinance prior to June 26, 2014 or it would be forced-pooled.

STAFF RECOMMENDATION

Unfortunately, the deadline for negotiating a lease or being subject to a forced pooling order has occurred prior to the City's adoption of the updated oil and gas regulations, thus requiring the City to proceed with a lease contrary to its stated intention to have updated regulations in effect prior to leasing any City land for oil and gas development or taking no action thereby being subject to the consequences of a forced pooling order.

Therefore, Staff recommends approval of the attached Ordinance. The Staff believes that it is in the best interests of the City to prevent its minerals from being forced pooled by entering into the Oil and Gas Lease with Synergy Resources. Staff finds the terms of the Lease to be fair, reasonable and acceptable.

ATTACHMENTS

- Ordinance to approve the Oil and Gas Lease with Synergy Resources Corporation
- The Proposed Oil and Gas Lease between the City of Brighton and Synergy Resources Corporation will be provided at the City Council meeting

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO APPROVING AN OIL AND GAS LEASE (NO SURFACE OCCUPANCY) WITH SYNERGY RESOURCES CORPORATION FOR +/- 140 NET ACRES IN CERTAIN PORTIONS OF SECTIONS 14, 24 AND 25, TOWNSHIP 1 SOUTH, RANGE 67 WEST OF THE 6TH P.M., ADAMS COUNTY COLORADO; FINDING THAT THE TERMS OF SAID LEASE ARE REASONABLE AND THAT IT IS IN THE BEST INTEREST OF THE CITY TO ENTER INTO SAID LEASE; AUTHORIZING THE MAYOR TO EXECUTE SAID LEASE ON BEHALF OF THE CITY AND THE CITY CLERK TO ATTEST THERETO; AUTHORIZING THE CITY MANAGER TO UNDERTAKE SUCH TASKS AND EXECUTE SUCH DOCUMENTS AS MAY BE REQUIRED TO IMPLEMENT SAID LEASE; AND SETTING FORTH OTHER DETAILS RELATED THERETO.

ORDINANCE NO. _____

INTRODUCED BY: _____

WHEREAS, in April and May of 2014, Ward Petroleum Corporation filed a series of Verified Applications with the Colorado Oil and Gas Conservation Commission for an order establishing a 640 acre drilling and spacing unit for horizontal wells in Sections 14, 24 and 25, Township 1 South, Range 67 West of the 6th P.M., Adams County and for an order for pooling of all interests in the Unit; and

WHEREAS, the City of Brighton owns certain lands located in the referenced Sections and was the subject of the forced pooling application; and

WHEREAS, the City is in the process of finalizing amendments to its Municipal Code by enacting updated regulations to facilitate the development of oil and gas resources within the City of Brighton, while mitigating potential impacts to the City's groundwater resources as well as potential land use conflicts between such development and other land uses; and

WHEREAS, the City intended to have updated regulations in effect prior to leasing any of its land for oil and gas development; and

WHEREAS, the Code revisions are expected to be adopted in August, 2014; and

WHEREAS, the City Council finds and determines that it is in the best interests of the City to make good faith efforts at this time to negotiate an oil and gas lease for the City owned property that was subject to the forced pooling order sought by Ward Petroleum rather than let those lands be force pooled; and

WHEREAS, unfortunately, the deadline for negotiating a lease or being subject to a forced pooling order has occurred prior to the City's adoption of the updated oil and gas regulations, thus requiring the City to proceed with a lease contrary to its stated intention to have updated regulations in effect prior to leasing any City land for oil and gas development or taking no action thereby being subject to the consequences of a forced pooling order; and

WHEREAS, with the direction and approval of the City Council representatives of the City have successfully negotiated an Oil and Gas Lease (No Surface Occupancy) with Synergy Resources Corporation for the +/- 140 net mineral acres that would be subject to the forced pooling application and subsequent order, a copy of which is attached hereto as Exhibit A; and

WHEREAS, the City Council finds and determines that the terms of said Lease are reasonable, and taking into consideration the timing circumstances and looming deadlines, further finds and determines that it is in the best interests of the City to enter into said Lease with Synergy Resources Corporation.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. The Mayor is authorized to execute said Oil and Gas Lease (No Surface Occupancy) with Synergy Resources Corporation, the City Clerk to attest thereto, and the City Manager is authorized to undertake such tasks and execute said documents as may be necessary to implement said Lease on behalf of the City.

Section 2. Purpose. The purpose of this Ordinance is to provide for the health, safety and welfare of the people.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS 17th DAY OF June, 2014.

CITY OF BRIGHTON, COLORADO

_____

Richard N. McLean, Mayor

ATTEST:

_____

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

_____

Margaret R. Brubaker, City Attorney

Published in the *Standard Blade*
First Publication: June 25, 2014

PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED THIS _____ DAY OF _____, 2014.

CITY OF BRIGHTON, COLORADO

_____
Richard N. McLean, Mayor

ATTEST:

_____
Natalie Hoel, City Clerk

Published in the *Standard Blade*
Final Publication: _____

City Council Agenda Item 8A

OFFICE OF THE CITY CLERK

To:	*Mayor McLean and City Council Members* *Manuel Esquibel, City Manager*
Prepared By:	*Natalie Hoel, City Clerk*
Date Prepared:	*June 11, 2014*
Reference:	*Board Appointment for the Liquor Licensing Authority*

PURPOSE:

To appoint by Resolution a member to the Liquor Licensing Authority.

BACKGROUND:

Per City Council Policy, applicants are required to go through an interview process and, upon City Council recommendation; members are appointed by the Mayor with Ratification by City Council.

There is currently one (1) vacancy on the Liquor Licensing Authority. There was one (1) application received by the City Clerk's Office and the City Council interviews were held on June 10, 2014.

RECOMMENDED ACTION:

A Resolution is attached for the purpose of filling the open position on the Liquor Licensing Authority.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPOINTING AMANDA LESINSKI AS A MEMBER OF THE LIQUOR LICENSING AUTHORITY WITH A TERM TO JANUARY, 2019.

RESOLUTION NO. _____

WHEREAS, On June 10, 2014 the Brighton City Council conducted interviews to fill the vacancy on the Liquor Licensing Authority; and

WHEREAS, the Mayor and City Council approved Ordinance 2002 on July 1, 2009, Amending the Policies for Appointment of Members to City Board, Commissions and Authorities to Specify term limits for Certain Board, Commission and Authority Appointees; and

WHEREAS, the City Clerk advertised and received one (1) application to fill the vacancy; and

WHEREAS, the City Council desires to enable the Liquor Licensing Authority to function and work toward the betterment of the City.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, THAT THE FOLLOWING APPOINTMENTS BE MADE.

LIQUOR LICENSING AUTHORITY

1. **Amanda Lesinski** **Term: January, 2019**

Adopted this 17th day of June, 2014.

CITY OF BRIGHTON, COLORADO

_____

Richard N. McLean, Mayor

ATTEST:

_____

Natalie Hoel, City Clerk

City Council Agenda Item 8B

Department of Parks and Recreation

Reference: ***Resolution Authorizing the Signing of a Grant Agreement with Adams County for Grant Funding in the Amount Not to Exceed $417,300.00 for the Bromley-Hishinuma Historic Farm Landscape Project, and Authorizing the City Manager to Sign and Execute the Grant Agreement.***

To:	**Mayor Richard N. McLean and Members of City Council**
Through:	**Manuel Esquibel, City Manager**

☐ Attorney Reviewed: _____ ☐ Regular Council Agenda Date: _____
☐ Finance Reviewed: _____ ☐ Resolution / Ordinance # _____
☐ Publication Dates: _____

Prepared By:	**Gary Wardle, Director of Parks and Recreation; and Mark Heidt, Assistant Director of Parks and Recreation**
Date Prepared:	**June 10, 2014**

PURPOSE

A Resolution authorizing the City of Brighton to enter into a Grant Agreement with Adams County, for grant funding in the amount not to exceed $417,300.00 for the Bromley-Hishinuma Historic Farm Landscape Project, and authorizing the City Manager to sign and execute the Grant Agreement.

BACKGROUND

The Parks and Recreation Department Staff applied for and received grant funding from Adams County Open Space for the Bromley-Hishinuma Historic Farm Landscape Project in February, 2014 for the amount of $417,300.00, through an Adams County Open Space – Passive Grant. The total amount of this Adams County Open Space – Passive Grant project is estimated to be $695,500.00**.**

This Adams County Open Space Active Grant Contractual Agreement will pay for $417,300.00 (60.0% of total) of the landscape project. The City has budgeted funds within the 2014 budget of $278,200.00 (40.0% of total). The Parks and Recreation Department may apply for a Garden Show Foundation Grant in early 2015 for approximately $30,000.00. This amount, if the City receives the Garden Show Foundation funding, will be part of the City's match. If the Foundation funds the $30,000.00 then the Parks and Recreation Department would bring to City Council a Resolution for Contract approval at a later date.

These three funding sources will cover the estimated $695,500.00 cost of the Bromley-Hishinuma Historic Farm Landscape Project. The approval of the attached Resolution will be for a total of grant funding of $417,300.00 by Adams County.

The City Attorney has reviewed as to form the Grant Agreement and confirms that it is Adams County's standard agreement and that the terms are reasonable. The attached Resolution allows the City of Brighton, through the City Council, to enter into the Agreement with Adams County and to allow the City Manager to sign and execute the Grant Agreement.

FINANCIAL IMPACT

Signing the Grant Agreement with Adams County will allow the City of Brighton to receive $417,300.00 in grant funding for the Bromley-Hishinuma Historic Farm Landscape Project.

OPTIONS FOR COUNCIL CONSIDERATION

- Approve the Resolution, or
- Deny the Resolution.

STAFF RECOMMENDATION

It is recommended that City Council approve the Resolution authorizing the City of Brighton to enter into a Grant Agreement with Adams County, for grant funding in the amount of $417,300.00 for the Bromley-Hishinuma Historic Farm Landscape Project, and authorizing the City Manager to sign and execute the Grant Agreement.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING THE OPEN SPACE GRANT AGREEMENT WITH ADAMS COUNTY IN THE AMOUNT NOT TO EXCEED FOUR HUNDRED SEVENTEEN THOUSAND THREE HUNDRED DOLLARS ($417,300.00), TO PROVIDE FUNDING FOR THE PROJECT REFERRED TO AS THE "BROMLEY-HISHINUMA HISTORIC FARM LANDSCAPE PROJECT"; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID GRANT AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, the City Council of the City of Brighton determines that it is appropriate for the City to apply for funding through the Adams County Open Space Grant for the project entitled "Bromley-Hishinuma Historic Farm Landscape Project" (the "Project"); and

WHEREAS, the City of Brighton supports the landscape renovation of the Bromley-Hishinuma Farm in said Project; and

WHEREAS, in February, 2014, the Parks and Recreation Department Staff applied for grant funding from Adams County Open Space for the Bromley-Hishinuma Historic Farm Landscape Project in the amount of $417,300.00; and

WHEREAS, the City of Brighton has received the grant funding of $417,300.00 from Adams County to fund the Project, subject to the execution of a Grant Agreement; and

WHEREAS, the City of Brighton City Council believes that it is reasonable and proper for the City to enter into a written agreement with Adams County for the budgeting, allocation and contribution of funds to the Project in the amounts contemplated herein; and

WHEREAS, the City Council finds and determines that said Grant Agreement is necessary and proper in order to proceed with the Project, and that it is in the best interests of the City to approve entering into such an Agreement for the Adams County Open Space grant funding for the Project; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, AS FOLLOWS:

1. The City Council of the City of Brighton hereby authorizes the City Manager to sign and execute the Grant Agreement with Adams County in an amount not to exceed $417,300.00 in grant funding for the project entitled "Bromley-Hishinuma Historic Farm Landscape Project".

2. The City Manager is authorized to undertake such tasks and execute such documents as may be required to implement the grant for the Project, including, without limitation, executing the Grant Agreement.

3. This Resolution to be in full force and effect from and after its passage and approval.

RESOLVED, this 17th day of June 2014.

CITY OF BRIGHTON, COLORADO

By:_____
Richard N. McLean, Mayor

ATTEST:

_____
Natalie Hoel, City Clerk

APPROVED AS TO FORM:

_____
Margaret R. Brubaker, Esq.
City Attorney

City Council Agenda Item 8C

Department of Parks and Recreation

Reference: ***Resolution Authorizing the Signing of a Grant Agreement with Adams County for Mini-Grant Funding in the Amount Not to Exceed $5,000.00 for the Veterans Memorial at Veterans Park, and Authorizing the City Manager to Sign and Execute the Grant Agreement.***

To:	**Mayor Richard N. McLean and Members of City Council**
Through:	**Manuel Esquibel, City Manager**

☐ Attorney Reviewed: _____ ☐ Regular Council Agenda Date: _____
☐ Finance Reviewed: _____ ☐ Resolution / Ordinance # _____
☐ Publication Dates: _____

Prepared By:	**Gary Wardle, Director of Parks and Recreation; and Mark Heidt, Assistant Director of Parks and Recreation**
Date Prepared:	**June 10, 2014**

PURPOSE

A Resolution authorizing the City of Brighton to enter into a Grant Agreement with Adams County, for mini-grant funding in the amount not to exceed $5,000.00 for the Veterans Memorial at Veterans Park, and authorizing the City Manager to sign and execute the Grant Agreement.

BACKGROUND

The Parks and Recreation Department, over the past year, has been working with Zane DeLuccie (a Boy Scout that is working on an Eagle Scout Project) to create a Veterans Memorial. (A very large volunteer project.) In February 2014, the City requested grant funding through Adams County to help with this project. The City of Brighton was awarded grant funding from Adams County through an Adams County Open Space Mini-Grant in the amount of $5,000.00. (The maximum amount for a Mini-Grant.)

The total of the Veterans Memorial at Veteran Park project is estimated as $42,214.00. The Adams County $5,000.00 grant funding is 11.8% of the total project. The City's match for this Project is $37,214.00 (88.2% of the total) – the majority of which is in-kind labor and donated cash by the Eagle Scout and his volunteers. As of June 1, 2014, the City's cash match to the project is $2,000.00, and in-kind labor to grub and auger the site. The Eagle Scout is responsible for obtaining donated funds and labor for the remainder of the costs.

The City Attorney has reviewed as to form the Grant Agreement and confirms that it is Adams County's standard agreement and that the terms are reasonable. The attached Resolution allows the City of Brighton, through the City Council, to enter into the Agreement with Adams County and to allow the City Manager to sign and execute the Grant Agreement.

FINANCIAL IMPACT

Signing the Grant Agreement with Adams County will allow the City of Brighton to receive $5,000.00 in mini-grant funding for the Veterans Memorial at Veterans Park.

OPTIONS FOR COUNCIL CONSIDERATION

- Approve the Resolution, or
- Deny the Resolution.

STAFF RECOMMENDATION

It is recommended that City Council approve the Resolution authorizing the City of Brighton to enter into a Grant Agreement with Adams County, for mini-grant funding in the amount not to exceed $5,000.00 for the Veterans Memorial at Veterans Park, and authorizing the City Manager to sign and execute the Grant Agreement.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING THE OPEN SPACE MINI-GRANT AGREEMENT WITH ADAMS COUNTY IN THE AMOUNT NOT TO EXCEED FIVE THOUSAND DOLLARS ($5,000.00), TO PROVIDE FUNDING FOR THE PROJECT REFERRED TO AS THE "VETERANS MEMORIAL AT VETERANS PARK"; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID GRANT AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, the City Council of the City of Brighton determines that it is appropriate for the City to apply for funding through the Adams County Open Space Mini-Grant for the project entitled "Veterans Memorial at Veterans Park" (the "Project"); and

WHEREAS, a Boy Scout wanted to create and construct a Veterans Memorial in Veterans Park as his Eagle Scout Project; and

WHEREAS, the City Council of the City of Brighton previously approved the submittal of an Adams County Open Space grant application for said Project; and

WHEREAS, the City of Brighton supports the Eagle Scout Project located within Veterans Park in said Project; and

WHEREAS, in February 2014, the Parks and Recreation Department Staff applied for and received mini-grant funding from Adams County Open Space for the Project in the amount of $5,000.00, subject to approval and execution of the Grant Agreement; and

WHEREAS, the total amount of the Project funded through the Adams County Open Space – Mini-Grant is estimated to be $42,214.00 – a majority of which is in-kind labor from the Eagle Scout and his volunteers; and

WHEREAS, the City of Brighton City Council believes that it is reasonable and proper for the City to enter into a written agreement with Adams County for the budgeting, allocation and contribution of funds to the Project in the amounts contemplated herein; and

WHEREAS, the City Council finds and determines that said Grant Agreement is necessary and proper in order to proceed with the Project, and that it is in the best interests of the City to approve entering into such an Agreement for the Adams County Open Space grant funding for the Project; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, AS FOLLOWS:

1. The City Council of the City of Brighton hereby authorizes the City Manager to sign and execute the Grant Agreement with Adams County in an amount not to exceed $5,000.00 in mini-grant funding for the project entitled "Veterans Memorial at Veterans Park".

2. The City Manager is authorized to undertake such tasks and execute such documents as may be required to implement the grant for the Project, including, without limitation, executing the Grant Agreement.

3. This Resolution to be in full force and effect from and after its passage and approval.

RESOLVED, this 17th day of June 2014.

CITY OF BRIGHTON, COLORADO

By:_____
Richard N. McLean, Mayor

ATTEST:

_____
Natalie Hoel, City Clerk

APPROVED AS TO FORM:

_____
Margaret R. Brubaker, Esq.
City Attorney

City Council Agenda Item 8D

Department of Parks and Recreation

Reference: ***Resolution Authorizing the Signing of a Grant Agreement with Adams County for Grant Funding in the Amount of $204,000 for the Pleasant Plains Schoolhouse Property Acquisition, and Authorizing the City Manager to Sign and Execute the Grant Agreement.***

To:	**Mayor Richard N. McLean and Members of City Council**
Through:	**Manuel Esquibel, City Manager**

☐ Attorney Reviewed: _____ ☐ Regular Council Agenda Date: _____
☐ Finance Reviewed: _____ ☐ Resolution / Ordinance # _____
☐ Publication Dates: _____

Prepared By:	**Gary Wardle, Director of Parks and Recreation; and Mark Heidt, Assistant Director of Parks and Recreation**
Date Prepared:	**June 10, 2014**

PURPOSE

A Resolution authorizing the City of Brighton to enter into a Grant Agreement with Adams County, for grant funding in the amount of $204,000.00 for the Pleasant Plains Schoolhouse Property Acquisition, and authorizing the City Manager to sign and execute the Grant Agreement.

BACKGROUND

The Parks and Recreation Department Staff applied for and awarded grant funding from Adams County Open Space for the Pleasant Plains Schoolhouse Property Acquisition. The Open Space Passive Grant funding will be used for the land acquisition of the 1-acre land with historic schoolhouse site. The total cost for the Pleasant Plains Schoolhouse Property Acquisition is estimated to be $340,000.00.

It is estimated that the Adams County Open Space Passive Grant will pay for $204,000.00 (60.0% of total) of the Acquisition. The City's matching portion is an estimated amount of $136,000.00 (40.0% of total).

The Pleasant Plains Schoolhouse property is located at 13701 East 144th Avenue, adjacent to the 144th Avenue Farmland Preservation site (a previous Adams County Open Space grant funded acquisition). The site is located in an area that is designated as a high need for preservation in Adams County Open Space documents, and as Open Space in the Brighton Open Space Master Plan.

The City Attorney has reviewed as to form the Grant Agreement and confirms that it is Adams County's standard agreement and that the terms are reasonable. The attached Resolution allows the City of Brighton, through the City Council, to enter into the Agreement with Adams County and to allow the City Manager to sign and execute the Grant Agreement.

FINANCIAL IMPACT

Signing the Grant Agreement with Adams County will allow the City of Brighton to receive $204,000.00 in grant funding for the Pleasant Plains Schoolhouse Property Acquisition that will be used for the purchase.

OPTIONS FOR COUNCIL CONSIDERATION

- Approve the Resolution, or
- Deny the Resolution.

STAFF RECOMMENDATION

It is recommended that City Council approve the Resolution authorizing the City of Brighton to enter into a Grant Agreement with Adams County, for grant funding in the amount of $204,000.00 for the Pleasant Plains Schoolhouse Property Acquisition, and authorizing the City Manager to sign and execute the Grant Agreement.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING THE OPEN SPACE GRANT AGREEMENT WITH ADAMS COUNTY IN THE AMOUNT OF TWO HUNDRED FOUR THOUSAND DOLLARS ($204,000.00), TO PROVIDE FUNDING FOR THE ACQUISITION OF CERTAIN REAL PROPERTY REFERRED TO AS THE "PLEASANT PLAINS SCHOOLHOUSE PROPERTY ACQUISITION"; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID GRANT AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, the City Council of the City of Brighton determines that it was appropriate for the City to apply for an Adams County Open Space Grant, for the purchase of 1-acre of land with historic schoolhouse, and this purchase project is entitled "Pleasant Plains Schoolhouse Property Acquisition" (the "Project"); and

WHERAS, the City of Brighton supports the acquisition of said Project; and

WHEREAS, the City of Brighton has received a grant for $204,000.00 from Adams County to fund the Project, subject to the execution of a Grant Agreement; and

WHEREAS, the City of Brighton City Council believes that it is reasonable and proper for the City to enter into a written agreement with Adams County for the budgeting, allocation and contribution of funds to the Project in the amounts contemplated herein; and

WHEREAS, the City Council finds and determines that said Grant Agreement is necessary and proper in order to proceed with the Project, and that it is in the best interests of the City to approve entering into such an Agreement for the Adams County Open Space grant funding; and

WHEREAS, the City Council authorizes the City Manager to sign and execute the Grant Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, AS FOLLOWS:

1. The City Council of the City of Brighton hereby authorizes the City Manager to sign and execute the Grant Agreement with Adams County for $204,000.00 in grant funding for the project entitled "Pleasant Plains Schoolhouse Property Acquisition".

2. This Resolution to be in full force and effect from and after its passage and approval.

RESOLVED, this 17th day of June 2014.

CITY OF BRIGHTON, COLORADO

By:_____
Richard N. McLean, Mayor

ATTEST:

_____
Natalie Hoel, City Clerk

APPROVED AS TO FORM:

_____
Margaret R. Brubaker, Esq.
City Attorney

City Council Agenda Item 9A

Department of Utilities

STAFF REPORT

Reference: Resolution Authorizing the City Manager to Execute a Water Trade Agreement with Central Colorado Water Conservancy District

To: **Mayor Richard N. McLean and Members of City Council**
Through: **Manuel Esquibel, City Manager**

☐ **Study Session Date: _____** ☐ **Regular Council Agenda Date: _____**
☐ **City Attorney Approval _____** ☐ **City Manager Approval: _____**
☐ **Finance Director Approval: _____**

Through: **Clint Blackhurst, Interim Utilities Director**

Prepared By: **Sarah E. Borgers, P.E., Assistant Director**

Date Prepared: **June 10, 2014**

PURPOSE

Consider a resolution to authorize the City Manager to execute a water trade agreement with Central Colorado Water Conservancy District.

BACKGROUND

The City is completing Water Court Case 03CW320. The purpose of this decree is four-fold:

- Adjudicate four wells in the Beebe Draw Aquifer
- Change FRICO-Barr and Burlington Barr water shares from agricultural use to municipal use
- Adjudicate exchanges
- Create an augmentation plan for the Beebe Draw Wells

Brighton typically acquires water shares that were historically delivered to farms along the Fulton Ditch, the Brighton Lateral, the Burlington Ditch, and in and below Barr Lake. In this case, the City is changing shares that were historically delivered to farms below Barr Lake.

When a share of water is changed from agricultural use to municipal use, certain limitations are applied to how much of the original amount of water is available for municipal use. The goal and requirement is to mimic historical practices as closely as possible. Historically, the farmer would have irrigated his land with his water share. A portion of that water would have runoff the top of the soil as surface flow and made its way back to the South Platte River. Similarly, some of the water would have infiltrated down into the soil and into the groundwater system. This water would have then made its way back to the South Platte River through the groundwater system. This amount of water that would have returned to the river is called “return flow”. There is a remaining piece that would have evaporated off the surface and/or would be used by the crop and transpired into the atmosphere. This piece that gets used up in the process is called “consumptive use”, and this is the piece that Brighton is able to pick up and use for municipal purposes.

Brighton is required to replace return flows at the same time and place and in the same amount that would have historically made their way back to the river. Many of the City's return flows are due approximately at the confluence of the South Platte River and the Poudre River. This is well north of any of Brighton's existing facilities. Brighton can release water from existing facilities at and in the vicinity of Ken Mitchell to make these return flows; however, there would be a huge loss of water in having to transport water that far downstream.

Central Colorado Water Conservancy District ("Central") operates many wells that run under augmentation plans very similar to the City of Brighton's augmentation plans. In conjunction with these augmentation plans Central owns changed water near the confluence with the Poudre River, where the City needs water. Central's supplies are largely north of Brighton, but they also need water in the stretch of river near the City's Ken Mitchell Lakes. Rather than both parties taking significant losses transporting supplies large distances, this agreement proposes a one-for-one trade of water. Central would provide water for the City of Brighton's use at the Poudre River. Brighton would provide an equal amount of water for Central's use at or near Ken Mitchell Lakes. The agreement would be for up to 252 acre-feet, which is the expected amount of water Brighton would need annually for its return flow requirements.

FINANCIAL IMPACT

There is no direct financial impact to the City; however, this agreement would allow for more efficient use of the City's existing water resources. It would eliminate transit losses associated with transporting water down river, which in this case, could result in losing a third of the water released for return flow purposes. This agreement would free up that lost water for use elsewhere, resulting in an overall increase in usable City's assets.

OPTIONS FOR CITY COUNCIL CONSIDERATION

The Council may take any of the following actions:

1. Approve the resolution as stated.
2. Reject the proposed resolution.
3. Postpone consideration of the proposed resolution to negotiate item(s) in the Agreement.

STAFF RECOMMENDATION

Staff recommends the approval of this agreement. There is no impact on the budget related to this agreement, and it will allow the City to capture significant water savings.

ATTACHMENTS

- Resolution of the City Council of the City of Brighton, Colorado, Acting by and Through Its Water Enterprise, Authorizing the City Manager to Execute a Water Trade Agreement with Central Colorado Water Conservancy District.
- Water Supply and Delivery Agreement between the City of Brighton and the Central Colorado Water Conservancy District and Groundwater Management Subdistrict of the Central Colorado Water Conservancy District

CITY OF BRIGHTON
CITY COUNCIL RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, ACTING BY AND THROUGH ITS WATER ENTERPRISE, AUTHORIZING THE CITY MANAGER TO EXECUTE A WATER SUPPLY AND DELIVERY AGREEMENT WITH CENTRAL COLORADO WATER CONSERVANCY DISTRICT.

RESOLUTION NUMBER: _____

WHEREAS, the City of Brighton has Water Court Case 03CW320 that will allow the City to operate its wells under the call system, change water shares for municipal uses, adjudicate exchanges, and authorize an augmentation plan in the Beebe Draw and South Platte River Basins, and

WHEREAS, the City will have certain return flow requirements near the Cache La Poudre River but does not have infrastructure available in that area, and

WHEREAS, Central Colorado Water Conservancy District has expressed a need for water supplies near the City of Brighton's Ken Mitchell Lakes, and

WHEREAS, it would be a significant water savings for the City of Brighton to enter into a water trade agreement with Central Colorado Water Conservancy District.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:

1. The Water Supply and Delivery Agreement between the City of Brighton and Central Colorado Water Conservancy District and Groundwater Management Subdistrict of the Central Colorado Water Conservancy District is hereby approved.
2. The City Manager is authorized to execute such agreement on behalf of the City.

DATED THIS 17th DAY OF June, 2014.

CITY OF BRIGHTON, COLORADO

By:_____
Richard N. McLean, Mayor

ATTEST:

_____
Natalie Hoel, City Clerk

APPROVED AS TO FORM:

_____
Margaret R. Brubaker, City Attorney

WATER SUPPLY AND DELIVERY AGREEMENT

THIS WATER SUPPLY AND DELIVERY AGREEMENT ("Agreement"), dated this 10th day of June, 2014 is made by and between the Central Colorado Water Conservancy District and Groundwater Management Subdistrict of the Central Colorado Water Conservancy District ("Central") and the City of Brighton, a home rule municipal corporation of the County of Adams, acting by and through its Water Activity Enterprise ("Brighton"). Brighton and Central are sometimes collectively referred to as the "Parties" or separately as a "Party".

RECITALS

A. The City of Brighton is a Colorado home rule municipal corporation that operates a water supply and delivery system, acting by and through its Water Activity Enterprise.

B. Central owns and operates reservoir systems and related structures which provide water augmentation and decree administration for irrigation wells in their district which covers an area of land from Brighton north to Greeley and east to Fort Morgan.

C. Brighton and Central own storage and delivery structures and the rights to fully consumable water available to satisfy return flow obligations or provide replacement of out of priority depletions caused by well diversions, and each have augmentation plans which have been decreed or are pending.

D. The Parties desire to supply and deliver a portion of their fully consumable water rights as the replacement source for well depletions or to satisfy return flow obligations as part of their augmentation plans.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the adequacy of which is hereby confessed and acknowledged by the Parties, Brighton and Central agree as follows:

1. Term. The term of this Agreement shall be perpetual.

2. Water.

A. Amount. Brighton and Central agree to provide each other with up to two hundred fifty acre-feet (252 a.f.) of fully consumable water annually. Brighton and Central agree to deliver such water in accordance with the following monthly schedules. Delivery of water under this Agreement shall not begin until the Party requesting the delivery provides written notice to the Party delivering the water that delivery is requested to begin.

B. Delivery Volume.

MONTHLY WATER DELIVERY SCHEDULE IN ACRE-FEET FROM BRIGHTON TO CENTRAL

Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Total
21	21	21	21	21	21	21	21	21	21	21	21	252

MONTHLY WATER DELIVERY SCHEDULE IN ACRE-FEET FROM CENTRAL TO BRIGHTON

Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Total
21	21	21	21	21	21	21	21	21	21	21	21	252

Upon written notice given by either Party, and subject to the mutual consent of the Parties, the monthly delivery schedule may be adjusted so long as the daily delivery rate does not exceed 1 cfs. The adjusted delivery schedule shall not exceed a total volume of 252 acre-feet during any calendar year. On or before September 1st each year, both Parties shall submit a monthly schedule setting forth anticipated monthly delivery amounts of fully consumable water for the upcoming calendar year. The Parties will provide monthly accounting to the Division Engineer. Accounting for water supplied under this Agreement will be included in this monthly accounting, or more frequently if so required by the Division Engineer. The source of the water shall be determined by Parties in their sole discretion. The Parties shall separately be responsible for, and shall bear, any carriage loss or charge, transit loss, ditch loss (whether by seep, evaporation, or otherwise) or similar loss of the amount of water delivered from the point of delivery of the water to the place of augmentation or replacement use. Subject to the terms of this Agreement and, in particular, paragraph 5 herein, the Parties agree to deliver the water and each Party may enforce the Agreement, but under no circumstances shall either Party be subject to monetary damages for failure to deliver any of the said water.

C. Delivery Rate. The delivery rate shall be at a constant rate of flow of 0.348 cfs at the locations described below in paragraph 2.D, unless the parties agree to modify such delivery rate. The rate of flow may be modified up to a maximum of 1 cfs. Any modification shall be memorialized in writing, either by email or fax, and must be made at least 48 hours in advance of the change in rate occurring. The conversion of 1 cfs-day equals 1.9835 acre-feet, will be used for calculation of deliveries.

D. Location. The delivery of the fully consumable water from Central to Brighton shall be at the confluence of the Cache La Poudre River and South Platte River located in the SW ¼ of Section 6, Township 5 North, Range 64 West, 6thP.M. The delivery of the fully

consumable water from Brighton to Central shall be made to the South Platte River in that stretch of river running from Section 35, Township 1 South, Range 67 West, 6th P.M. north to Section 31, Township 1 North, Range 66 West, 6th P.M. Central shall be delivering water from its facilities located on or near the Cache La Poudre River and Brighton shall be delivering water from its facilities, including but not limited to the 124th Avenue Storage Reservoir or 124th Augmentation Station, Ken Mitchell Lakes complex, the confluence of Brighton's North Storm Drain Outfall or South Storm drain Outfall or similar facilities.

E. Use. The Parties shall use the water supplied under this Agreement pursuant to a court approved plan for augmentation or pursuant to a State Engineer approved temporary substitute supply plan, to replace out-of-priority water depletions and/or historical return flows. Neither Party shall use the water for any other use or sublease the water hereunder to any other party.

3. Commencement Date. The commencement date of this Agreement shall begin on Brighton providing written notice to Central in2014 and shall continue thereafter according to its terms.

4. Contingency. This Agreement is expressly contingent upon Brighton receiving a final decree in Case No. 03CW320, District Court, Water Division No. 1 ("03CW320") which incorporates the supply of this water for Brighton's augmentation and replacement needs under the augmentation plan described in that decree. If said decree in 03CW320 is not achieved as described herein, then Brighton may terminate this Agreement.

5. No Rights Conferred. Except as otherwise provided in this Agreement, the Parties acknowledge that all water delivered hereunder is intended for the present and future use of the respective Parties. It is further understood and agreed to by the Parties that this Agreement shall confer no rights in such water other than as specifically stated in paragraph 2 above, nor shall any future needs of either Party for water enable them to make claim against one another for any of the respective water rights owned or controlled by the Parties. The Parties further acknowledge the statutory prohibition against vesting of a right for a continued lease expressed in C.R.S. §31-35-201 as may be applicable.

6. Assignment. This Agreement may not be assigned by a Party without the prior written consent of the other Party, which consent is within the sole and absolute discretion of each of the Parties. Brighton and Central recognize that the rights, obligations and performance under this Agreement are unique and specific in relation to the Parties. This Agreement and all the terms and conditions herein shall be binding upon the successors and assigns of the Parties hereto.

7. Notices. All notices shall be in writing and shall be delivered by hand delivery or U.S. mail, postage prepaid, to the parties at the addresses set forth below. Notices shall be deemed received three days after deposit in the U.S. mail, postage prepaid.

City of Brighton
500 South 4th Avenue
Brighton, Colorado 80601

CCWD
3209 W. 28th Street
Greeley, Colorado 80634

8. Survival. If any cause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws or decrees effective during the term of this Agreement, then and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby.

9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed and original, and all of which taken together shall constitute the agreement of the parties. Facsimile or scanned signature pages sent via email shall be acceptable and binding upon all Parties.

10. Headings. Headings and titles contained in this Agreement are intended for the convenience of the parties only and are not intended to confine, limit, or describe the scope of intent of any provision.

11. Entire Agreement. This writing constitutes the entire Agreement between Brighton and Central and supercedes all prior written or oral communications, negotiations, agreements, representations and understandings of the parties with respect to the subject matter contained herein.

{remainder of page intentionally left blank}

IN WITNESS HEREOF, the undersigned parties have caused this Agreement to be executed on the day and year first written above.

CITY:

CITY OF BRIGHTON

By: _____
Manuel Esquibel, City Manager

ATTEST:

_____
Natalie Hoel, City Clerk

DISTRICT:

Central Colorado Water Conservancy District and
Groundwater Management Subdistrict of the
Central Colorado Water Conservancy District

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The foregoing instrument was acknowledged before me the ____ day of June, 2014, by _____, _____, Central Colorado Water Conservancy District and Groundwater Management Subdistrict of the Central Colorado Water Conservancy District.

WITNESS my hand and official seal.

_____
Notary Public
My commission expires: _____